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OR THE

Parish Officer's Complete Duty.

Brought down to the present Period.

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TOGETHER

With the adjudged CASES relating to every Kind of Parish Business, placed in Alphabetical Order.

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It is also a necessary Companion for every Inhabitant of a Parish, who may not be a Parish Officer; as it will enable him to judge whether the Parish Duties are properly executed by others, and to defend himself against the Ignorance of those who are unacquainted with their Duty, as well as the arbitrary Measures of those, who too frequently want to exercise an Authority which they are not warranted to do by Law.

By a GENTLEMAN of LINCOLN'S INN.

THE SECOND EDITION.

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M,DCC,LXXIV.

PREFACE.

ALTHOUGH there are ſeveral treatiſes extant on the duty of pariſh officers, and although ſome of them may be allowed a conſiderable degree of merit; yet it muſt alſo be acknowledged that they are not ſo perfect as they might have been. Beſides, new acts of parliament are continually making, and new adjudications in conſequence thereof; ſo that in the courſe of a few years, a work of this kind becomes in a manner uſeleſs, and new performances of the ſame nature becomes abſolutely neceſſary.

Very little apology is therefore neceſſary for uſhering into the world a new performance on pariſh law. How far it is ſuperior to other publications on this ſubject, is left to the deciſion of the candid and impartial public: Let it however be obſerved, that the utmoſt care has been taken to render it as generally uſeful as poſſible, by avoiding every thing that is now become obſolete, and by ſupplying all the deficiencies of preceding writers.

It

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It may be neceſſary to obſerve that ſince the publication of any treatiſe on pariſh law, two very material acts of parliament have paſſed; the one for amending and reducing into one act, all the ſtatutes now in being for the amendment and preſervation of the public highways; and the other for reducing into one act, all the laws now in force for regulating turnpike-roads. Both theſe acts are given in this work, which, excluſive of any other conſideration, muſt render this performance infinitely ſuperior to any thing of the kind.

If, upon peruſal, this attempt ſhould meet with the approbation of the public, and ſhould be reckoned uſeful to his Majeſty's ſubjects, the editor's end is anſwered, as his higheſt ambition is to be ſerviceable to mankind.

It is proper to obſerve that in this ſecond edition, beſides the new highway and turnpike acts, there are ſeveral very conſiderable improvements, particularly a new act concerning the ſettlement of thoſe poor who are born in public lying-in-hoſpitals, and ſeveral new adjudged caſes, eſſentially neceſſary for the direction of pariſh officers.

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Affray.

AN affray is a fighting between two or more persons, and there must be a stroke given, or a weapon drawn, to make an affray. Affrays what.

A constable may command affrayers to depart on pain of imprisonment; and if they refuse or make resistance, he may justify the beating them, and call others to his assistance, *Dalt.* 35. 4 *Co.* 4. Affrayers to depart.

Affrayers not discontinuing, but still threatning to wound each other, he may put in the stocks till he can carry them before a justice; and if any assault be made upon the constable, he may not only defend himself, but put the party in the stocks, as aforesaid, till he can convey him before a justice, or to the gaol. *Dalt. f.* 4, 5, 35, *&c. Kitch.* 69. Set in the stocks on resistance.

Persons making affrays may be imprisoned.

If any sudden affray shall happen through passion, or excess of drink, the constable may put the affrayers in prison, if there be one in the vill, till the heat of their passion or intemperance be over, though he deliver them afterward, or until he can have them before some justice of peace. 2 *Hale's Hist. P. C.* 95.

But though no bare words carry in them so much terror as to amount to an affray, yet in some cases there may be an affray where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally create terror to the people; which is said to have been always an offence at the common law, and is strictly prohibited by statute.

For by the stat. 2 *Ed.* 3. *c.* 3. it is enacted that no man, except the king's servants in his presence, and his ministers in executing their office, and such as be in their company assisting them, *And also* upon a cry made for arms to keep the peace, shall come before the king's justices, or other of the king's ministers during their office, with force and arms, nor bring any force in affray of peace, nor go nor ride armed, by night or day, in fairs or markets, or in the presence of the king's justices, or other ministers, or elsewhere; upon pain to forfeit their armour to the king, and their bodies to prison at the king's pleasure.

But it is holden upon these words, that no wearing of arms is within the meaning of this statute, unless it be accompanied with such circumstances as are apt to terrify the people;

people; from whence it appears clearly, that persons of quality are in no danger of offending against this statute, by wearing common weapons, or having their usual number of attendants with them, for their ornaments or defence, in such places, and upon such occasions, in which it is the common fashion to make use of them, without causing the least suspicion of an intention to commit an act of violence, or disturbance of the peace. 1 *Hawk.* 136.

Affrayers no remedy.

And if a constable, or any one aiding and assisting him, shall happen to be killed, it is murder; and if they are wounded in the affray, they shall have good damages; but the affrayers in such case shall be without remedy. *Lamb.* 141, 142.

When a warrant necessary, and when not.

A person who shall assault, threaten to kill, or beat another in the presence of a constable, or do any other act which amounts to a breach of the peace, he has power to carry the offender before a justice of the peace without warrant; but if the affray or breach of the peace is over before he comes, he must not arrest the affrayers without a justice's warrant, except some person be dangerously hurt. And if there be nothing but words, the constable may not lay hands on them. *Dalt.* 36.

It is said, that if a constable shall see persons either actually engaged in an affray, as by striking, or offering to strike, or drawing their weapons, or the like; or upon the point of entering upon an affray, as where one shall threaten to kill, wound, or beat another,

other, he may either carry the offender before a justice, to find sureties for the peace, or imprison him of his own authority for a reasonable time, till the heat shall be over, and afterwards detain him till he find such surety by obligation. But it seems, that he ought not to lay hands on those, who barely contend with hot words, without any threats of personal hurt: and that all which he can do in such case, is to command them under pain of imprisonment to avoid fighting. 1 *Haw.* 137. But if he is so far entrusted with a power over all actual affrays, that though he himself is a sufferer by them and therefore liable to be objected against, as it may be supposed he would be partial in his own cause, yet he may suppress them; and therefore, if an assault be made upon him, he may not only defend himself, but imprison the offender, as if he were no way a party. 1 *Haw.* 137.

Affrayers pursued into another county; breaking open doors.

Though a constable may pursue affrayers into another county; yet out of the county he is only an assistant to the constable there; and he may justify the breaking open doors to apprehend affrayers, and keep the peace. *Plowd.* 37. *Cromp.* 145. *Lamb.* 135. 185, *&c.*

If an affray be in a house, the constable may break open the doors to preserve the peace; and if affrayers fly to a house, and he follow with fresh suit, he may break open the doors to take them. 1 *Haw.* 137.

But a constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice, unless a felony were done, or like to be done; for it is

is the business of a constable to preserve the peace, and not to punish the breach of it. 1 *Haw.* 137.

If an affray is made, and the constable refuses to go to keep the peace, being informed of it, he may be fined in the sessions, on presentment by the grand jury. *Cromp.* 846.

Constables neglecting their punishment.

All affrays are punishable by fine and imprisonment. 1 *Haw.* 138.

And all affrays are inquirable in the leet, as common nuisances. 3 *Inst.* 158.

Apprentices.

There are several obsolete statutes concerning who may take apprentices, wherein directions are given about the value of the estates of the parents of such apprentices. They were originally intended for the encouragement of husbandry, on account of the scarcity of labourers in those times, but are now entirely useless, and ought to be repealed.

BY 5 *Eliz. cap.* 4. *s.* 25. every householder having and using half a ploughland, in tillage, may take an apprentice under ten and above eighteen years of age, to serve in husbandry till twenty-one years at least, or twenty-four, if the parties can agree.

Every housholder, not under twenty-four years of age, dwelling in any city or town corporate, and exercising any art, mistery, or manual occupation there, may retain the

ſon of any freeman, not occupying huſbandry, nor being a labourer, to be bound and ſerve as an apprentice, after the cuſtom and order of the city of *London*, for ſeven years at the leaſt, ſo that ſuch apprenticeſhip ſhall not expire before the apprentice ſhall attain to the age of twenty-four years. 5 *Eliz. c.* 4. *ſ.* 26.

Binding to be by deed.

No one can be bound apprentice without deed. 1 *Salk.* 68.

And indented.

And by the ſtat. 5 *El. c.* 4. it muſt be by deed indented. *ſ.* 25.

M. 1 *G.* 2. *Smith and Birch.* An action was brought againſt a perſon, for enticing away and detaining another's apprentice, who had entered into an agreement in writing to ſerve the plaintiff for ſeven years. It appeared upon the evidence, that the ſtyle of the writing began, *This indenture witneſſeth, &c.* but in reality the parchment was not indented, but was a deed poll. On exception taken to the deed, it was urged that the youth was not an apprentice, not being bound by an indenture. An infant cannot be bound by any other way than as the ſtatute of 5 *El. directs*, which is by indenture, and nothing can make this good. Nor can the deed be now indented, becauſe that would be a forgery. Therefore unleſs the plaintiff can ſhew the apprentice to have been of full age at the time of ſigning the deed, he cannot be deemed his apprentice, and conſequently no action can lie for detaining him; neither can the plaintiff, by this deed, prove him to be his ſervant, for he has declared for an apprentice, and muſt prove him

him so to be. The plaintiff was therefore nonsuited. *Sess. Ca. v.* 1. 222.

But by the 31 *G.* 2. *c.* 11. it is enacted, that the apprentice may gain a settlement under such deed or writing, although it shall not be indented.

Of stamps.

By several statutes, the binding (except of parish apprentices) shall be on a 2 *s.* and 6 *d.* stamp; and such indenture shall not be given in evidence in any court till it be stamped, and the duties paid.

Of additional stamps.

Over and above the said stamps and duties, the duty of 6 *d.* shall be paid for every 20 *s.* of every sum of 50 *l.* or under; and the duty of 1 *s.* for every 20 *s.* of every sum above 50 *l.* given with any apprentice as an apprentice fee; and proportionably for larger or lesser sums, which is to be paid by the master. 8 *Ann. c.* 9.

This shall not, however, extend to any apprentice put out at the charge of any parish or township, or of any public charity. *s.* 40.

Such indentures within the bills of mortality, shall be brought to the head office to be stamped with a stamp for that purpose, and the duties shall be paid within one month after date. *s.* 36.

And elsewhere such indentures shall be brought, either to the head office within the bills, or to a collector of the stamp duties out of the said limits, within two months after date, and the duties shall be paid, and the indenture stamped, if it be at the said head office; otherwise such collector shall indorse

on the indenture, a receipt for the duties in words at length, and subscribe his name thereto. *s.* 37.

If it is within fifty miles of the bills of mortality, the indenture shall be brought within three months after date, and elsewhere within six months after date, to the head office to be stamped. *s.* 38.

Moreover, by the 9 *Ann. c.* 21. if any master shall neglect to pay the duties within the time limited, he shall forfeit 50*l.* one half to the king, and the other half, with all costs, to him who shall sue. *s.* 66.

And by 18 *G.* 2. *c.* 22. If he shall neglect to pay the duties within the time limited as aforesaid, he shall, besides all other penalties, forfeit double duty. *s.* 23, 24.

But there is an indemnifying clause in almost every session of parliament, for the relief of those who have neglected to pay the said duties.

How differences between masters and apprentices are to be determined.

By the *stat.* 20 *G.* 2. *c.* 19. *sect.* 3. It shall be lawful for two or more justices, upon any complaint by any apprentice put out by the parish, or any apprentice upon whose binding out no more than five pounds were paid, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment towards such apprentice, by his or her master or mistress, to summon them to appear before such justices at a reasonable time to be mentioned in such summons; and such justices may examine into the matter of such complaint; and upon proof thereof made, upon oath, to their satisfaction,

tisfaction, whether the master or mistress be present or absent, (if service of the summons be proved upon oath) such justices may discharge such apprentice, by warrant under their hands and seals; for which warrant no fees shall be paid.

Of misbehaviour of apprentices.

And such justices of the peace, upon complaint made, upon oath, by any master or mistress, against him or her, concerning any misdemeanor, miscarriage, or ill behaviour, in such his or her service (which oath such justices may administer) may hear and determine the same, and punish the offender by commitment to the house of correction, and kept to hard labour for a time not exceeding one kalendar month, or otherwise by discharging such apprentice in the manner before mentioned *Sect.* 4.

Any person who is aggrieved by such determination, order, or warrant of such justices as aforesaid (save and except any order of commitment) may appeal to the next general quarter-sessions to be held for the county, riding, liberty, city, town corporate, or place where such determination, or order, or warrant shall be made; and such general quarter-sessions is hereby impowered to hear and finally to determine the same, and to award such costs to any of the respective persons, appellant or respondent, as the said sessions shall think proper, not exceeding 40*s.* to be levied by distress and sale. *s.* 5.

No *certiorari* shall issue to remove any proceedings had in pursuance of this act, into any of his Majesty's courts of record at *Westminster*. *s.* 6.

By the ſtat. 31 *G.* 2. *c.* 11. *ſ.* 1. it is enacted, that, whereas, by an act made in the third year of *King William and Queen Mary*, intitled, "An act for the better explanation and ſupplying the defects of the former laws for the ſettlement of the poor," it is enacted, That if any perſon ſhall bind an apprentice by indenture, and inhabit in any town, pariſh, or place, ſuch binding and inhabitation ſhall be adjudged a good ſettlement: and whereas, ſince the making ſuch act, many perſons have been unwarily bound apprentices, by deeds, writings, or contracts, not indented, by which binding many have ſuffered great damage on account of their being refuſed a ſettlement in ſuch town or pariſh where they have been ſo bound, and reſided forty days, and have been removed to the pariſh where their laſt legal ſettlement was before ſuch apprenticeſhip, where they have had no encouragement to exerciſe their trades, or opportunity to gain a livelihood by their ſaid trades to which they were ſo bound apprentices: for relief therefore of ſuch apprentices, and for preventing ſuch miſchief for the future, be it enacted, that no perſon who ſhall have been bound an apprentice, or who ſhall hereafter be bound an apprentice, by any deed, writing, or contract, not indented, being firſt legally ſtamped, ſhall be liable to be removed from the town, pariſh, or place, where he or ſhe ſhall have been bound an apprentice, and reſident forty days, by virtue of any order of removal, granted by two juſtices of the peace of any county, riding, diviſion, city, town corporate,

corporate, or place, or by virtue of any order of the juſtices at their general or quarter-ſeſſions, by reaſon or on account of ſuch deed, writing, or contract not being indented only.

By the *Stat.* 6 *Geo.* 3. *c.* 25. *Sect.* 1. Whereas perſons frequently take apprentices who are very young, and for ſeveral years are rather a burthen than otherwiſe to their maſters: And whereas it frequently happens that ſuch apprentices, when they might be expected to be uſ ful to their maſters, abſent themſelves from their ſervice: For remedy whereof, be it enacted, *&c.* That from and after the 24*th* of *June*, 1766, if any apprentice ſhall abſent himſelf from his maſter's ſervice before the term of his apprenticeſhip ſhall be expired, every ſuch apprentice ſhall at any time or times thereafter, whenever he ſhall be found, be compelled to ſerve his ſaid maſter for ſo long a time as he ſhall have ſo abſented himſelf from his ſervice, unleſs he ſhall make ſatisfaction to his maſter for the loſs he ſhall have ſuſtained by his abſence from his ſervice; and ſo, from time to time, as often as any ſuch apprentice ſhall, without leave of his maſter, abſent himſelf from his ſervice before the term of his contract ſhall be fulfilled: And if any ſuch apprentice ſhall refuſe to ſerve as hereby required, or make ſuch ſatisfaction to his maſter, ſuch maſter may complain, upon oath to any juſtice of the county or place where he ſhall reſide, which oath ſuch juſtice is hereby impowered to adminiſter, and to iſſue a warrant under

Juſtices impowered to oblige apprentice to ſerve for ſuch time as he is abſent.

his hand and seal for apprehending such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and if he shall not give security to make such satisfaction according to such determination, it shall be lawful for such justice of the peace to commit such apprentice to the house of correction for any time not exceeding three months.

Except apprentices who pay 10 l. fee.

Provided always, that nothing in this act shall extend to any apprentice, whose master shall have received with him the sum of ten pounds. *Sect.* 2.

Or where seven years shall have elapsed.

Provided also, that no apprentice shall be compelled to serve for any time or term, or to make any satisfaction to any master, after the expiration of seven years next after the end of the term for which such apprentice shall have contracted to serve; any thing therein contained to the contrary notwithstanding. *Sect.* 3.

Justices impowered to grant warrants against artificers not fulfilling their contract, or being guilty of any misdemeanor.

Whereas it frequently happens, that artificers, callico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers and others who contract with persons for certain terms, leave or depart from their respective services before the terms of their contracts are fulfilled, to the great disappointment, prejudice and loss of the persons with whom they contract: For remedy whereof, be it enacted, that from and after the said 24*th* of *June* 1766, if any artificer, callico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer,

labourer, or other perſon, ſhall contract with any perſon for any time whatſoever, and ſhall abſent himſelf from his ſervice before the term of his contract ſhall be compleated, or be guilty of any other miſdemeanor; that then it ſhall and may be lawful for any juſtice of any county or place where any ſuch artificer, callico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, ſhall be found, and ſuch juſtice of the peace is hereby authorized and impowered, upon complaint thereof made upon oath to him by the perſon with whom ſuch artificer, or other perſon, ſhall have ſo contracted, or by his or her ſteward or agent; which oath ſuch juſtice is hereby impowered to adminiſter; to iſſue his warrant for the apprehending ſuch artificer, callico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, and to examine into the nature of the complaint; and if it ſhall appear to ſuch juſtice of the peace that any ſuch artificer, or other perſon, ſhall not have fulfilled ſuch contract, or hath been guilty of any miſdemeanor, it ſhall be lawful for ſuch juſtice of the peace to commit every ſuch perſon to the houſe of correction for any time not exceeding three months, nor leſs than one. *Sect.* 4.

Provided always, that if any perſon ſhall be aggrieved by ſuch determination, order, or warrant of any juſtice as aforeſaid, except an order of commitment, ſuch perſon may appeal to the next general quarter-ſeſſions of the peace to be held for the county or place where

Perſons aggrieved by the order of a juſtice may appeal, giving notice to the juſtice and entering into a recognizance, &c.

where ſuch determination or order ſhall be made; ſuch perſon giving ſix days notice of his intention of bringing ſuch appeal, and of the cauſe and matter thereof, to ſuch juſtice, and the parties concerned, and entering into a recognizance within three days after ſuch notice, before ſome juſtice of the peace for ſuch county or place, with ſufficient ſurety, conditioned to try ſuch appeal at, and abide the order or judgment of, and pay ſuch coſts as ſhall be awarded by the juſtices of the peace at ſuch quarter-ſeſſions, which ſaid juſtices, at their ſaid ſeſſions, upon due proof of ſuch notice being given, and of entering into ſuch recognizance as aforeſaid, ſhall and are hereby directed to hear and determine the cauſes and matters of all ſuch appeals; and ſhall give ſuch relief and coſts to the parties appealing or appealed againſt, as they ſhall judge proper and reaſonable, and their judgments and orders therein ſhall be final and concluſive. *Sect.* 5.

Limitation of this act reſpecting the ſtannaries and the city of London.

Provided alſo, that nothing in this act contained ſhall extend to the ſtannaries in the counties of *Devon* and *Cornwall*, or to leſſen the juriſdiction of the chamberlain of the city of *London*, or of any other court within the ſaid city, touching apprentices.

Binding over allowed by two juſtices of the quorum.

Eaſter, 12 *Geo.* 2. *The King* v. *The inhabitants of Wooſtanton.* On a ſpecial order of ſeſſions, the *queſtion* was, whether a boy bound over by juſtices (the boy being no party to the indenture) had gained a ſettlement, it being only ſtated that his binding was allowed and approved of by two juſtices. Now *ſtat.* 43 *Eliz.*

Eliz. cap. 2. requires that one of them ſhould be of the *quorum*. And for this omiſſion the court quaſhed the order. *Vide Strange, vol.* 2. *page* 1110.

Where an apprentice has not ſerved his whole time, leaves his maſter, and the maſter dies.

Eaſter, 26 *Geo.* 2. *The King* v. *The inhabitants of Eakring*. On a motion to quaſh an order of *ſeſſions* made to diſcharge an order of two juſtices for the removal of *G. W.* from *Eakring* to *Selſon*. The *caſe* ſtated to the court was: That *G. W.* a *pauper* of *Eakring*, was put out *apprentice* by indentures properly executed to *R. T. to ſerve him as a pariſh apprentice, till he ſhould accompliſh his age of* 21 *years*. The *apprentice* ſerved his maſter under theſe indentures for ſeveral years; about 3 years before he attained the age of 21, he ran away from his ſaid maſter and loitered for ſome time about the country. In *June* 1749, the maſter died, and at *Martinmas* following the ſaid *apprentice hired himſelf as a ſervant* to *W. F.* of *Selſon*, for a year, and ſerved him the time: at *Martinmas* 1750, he hired himſelf to the ſaid maſter for another year, and ſerved the time, and received all his wages to his own uſe; the executors of the maſter to whom he was bound out *apprentice* taking no notice of him. The ſaid *G. W. did not attain his age of* 21 *years*, till *January* 1750, and the *ſeſſions* were of opinion, that the ſaid *G. W.* did not by virtue of ſuch *hiring and ſervice* at *Selſon*, under the circumſtances aforeſaid, gain a ſettlement in the ſaid pariſh, and therefore diſcharged the original order. The council for quaſhing the order of ſeſſions *urged*, that after the maſter's death, the *apprentice*

prentice was at liberty to hire himself. That as he was *hired for a year*, and *served a year in Selson*, his legal settlement was *there*. An *apprenticeship* is a *personal trust* between the master and servant, and *determinable* by the death of either party, and cited 1 *Salk.* 66. *The King* v. *Peck*, *Michaelmas*, 10 *W.* 3. in support thereof. The council who was to shew cause, owned he could not defend it, but offered two *objections* to the original order. 1st. That the *parish* of *Eakring* is at first mentioned in it, and it then goes on and says, "And has lately intruded himself into your said town of *Eakring*," So that it is uncertain whether *Eakring* is a *town* or *parish*, which are different things. 2*d. Objection.* The *pauper* was only alledged to be *likely to become chargeable there*; Now *chargeable there*, does not imply that the *pauper* was likely to become *chargeable* to the *parish*, which is necessary that the order should state. Three *judges* held the first *objection* to be over nice, and over-ruled the same. *Denison* and *Foster*, Justices, thought the same concerning the second *objection*, and *Wright*, Justice, said, the word *there* did not necessarily import that the *pauper* was likely to become so to the *parish*.

By the court, Let the order of *sessions* be *quashed*, and the original order *affirmed*. *Vide Bur. S. C. vol.* 1. *page* 320.

Where apprentice agrees with the master without justices.

Hilary, 31 *Geo.* 2. *The King* v. *The inhabitants of Austrey*. On a motion to quash an order of sessions, made to quash an order of two justices, for removing *F. O.* his wife and child, from *Austrey* to *Grindon* in *War-*

Warwickshire, a rule to shew cause was obtained. *Case. F. O.* a *pauper* about ten years of age, was, in *April* 1744, bound *apprentice* by the churchwardens, *&c.* of *Grindon*, to *S. L.* of the same parish, until he should attain the age of 24, under *stat.* 43 *Eliz.* The *pauper* inhabited with his said master, and served him under the said indenture till *Michaelmas* 1754, when the master, in consideration of 40 *s.* paid him by his *apprentice*, agreed to discharge him therefrom; and a *receipt* and *discharge* was wrote on the back of the said indenture, by the said master. The *pauper*, on leaving his said master, *hired himself* for a year, and served the same in the parish of *Highham*; at *Michaelmas* 1755, he *hired himself* for another year to one *L.* in the parish of *Austrey* aforesaid, and served the year in the said *parish*, and received his *wages*. The *pauper*, 12*th July* 1757, was upwards of twenty-three years of age, but had not attained twenty-four years. The *exception* taken to the session's order was, that the master and the *apprentice* could not agree to part, nor could the master discharge such an *apprentice* without the consent of the *parish officers*; and therefore he gained no settlement by his being hired and serving a year, in *Higham* and in *Austrey*. *Lord Mansfield*, on inquiry, finding the *apprentice* was not of age, said, there was nothing in the case; the consent of an *infant apprentice* cannot be *valid*; and therefore his subsequent services must be naught. The two other *judges* on the bench concurred with him in opinion.

By

By the court, Let the order of *sessions* be quashed, and the order of the justices be affirmed. *Vide Bur. S. C. vol.* 2. *page* 441.

Where an apprentice was bound by charity, and money given with him, and the indentures not stampt.

Hilary, 7 *Geo.* 3. *The King* v. *The inhabitants of St. Matthew's, Bethnal Green.* On a motion to quash an order of *sessions*, made to quash an order of two justices, for the removing of *M. F.* widow, and her five children, from *St. Matthew's, Bethnal Green*, to *St. Botolph's, Aldgate*, a rule to shew cause was obtained. *Case. J. F.* husband of the said *M. F.* and father of the said children, was brought up at the charity-school of *St. John, Wapping*, in *Middlesex*. In 1747, he was bound *apprentice* by indenture, to *J. R.* a *blacksmith*, for seven years, and served the whole time, under the said indenture, with his said master in *St. Botolph's* aforesaid. When he was put out *apprentice*, the sum of 5*l.* was inserted in the said indenture, as a consideration for putting him out *apprentice* to his said master, paid out of a voluntary yearly contribution of the inhabitants of *St. John, Wapping, &c.* That the said indenture of *apprenticeship was* not *stamped* with any stamp denoting 6*d.* in the pound to have been paid by the said master for every pound of the said 5*l.* so paid to the said master as aforesaid. That the said *J. F.* in 1754, hired a dwelling-house in the parish of *Aldgate*, within the county of the city of *London*, of one *W. W.* for five months, during the remainder of a term the said *W. W.* had therein, and for which the said *J. F.* agreed to pay the said *W. W.* the sum of 4*l.* The said *J. F.* came with his family to settle in

n the ſaid houſe, and remained therein five months and upwards. That the ſaid houſe was, at ſuch time as the ſaid *J. F.* hired the ſame, worth, *to be let*, 10*l.* by the year. The council for the motion propoſed two *queſtions*. 1ſt, Whether a ſettlement was gained by the *apprenticeſhip?* For as it was a *charity binding*, and the money being paid out of a charity, it may be queſtioned, whether it was neceſſary that the indenture ſhould be ſtamped, as directed by *ſtat.* 8 *Ann. cap.* 9. 2d, Whether a taking for *five months*, paying only 4*l.* could be deemed a taking of a tenement of 10*l. per ann. value*, when 4*l.* for five months is not *equivalent* to 10*l.* for a year. *Lord Mansfield* declared his opinion on each point ſeparately. 1*ſt Point*. It is a *public* charity, and a very laudable one: it is not neceſſary that it ſhould be a *permanent* charity. The diſtinction between *public* and *private* charities is, a *private* one might be calculated to evade the act, a *public* one cannot be ſuppoſed to be ſo; but this is a *public* charity, within the reaſon and letter of the ſtatute. 2*d Point*, We are concluded from treating this tenement as being under 10*l. per ann.* value, by the finding of the juſtices, who have poſitively declared the tenement was, at the time of taking, worth, to be let, 10*l. per ann.* therefore I am clear on both points. *Aſton* and *Hewitt*, juſtices, concurred with the chief juſtice.

By the court, Let the rule be diſcharged, and the order of *ſeſſions* affirmed. *Vide Bur. S. C. vol.* 2 *page* 574.

Aſſault

Assault and Battery.

ASSAULT is derived from the old Latin word *assultus*, that is a leaping on, or from the French verb *assayler*, and signifies an attempt or offer, with force and violence, to do a corporal hurt to another; as by striking at him, with or without a weapon; or presenting a gun at him, at such a distance to which the gun will carry; or pointing a pitchfork at him, standing within the reach of it; or by holding up one's fist at him; or any other such like act done in a threatening or menacing manner.

Battery (from the French *battre*, to beat or strike, or from the Saxon word *batte*, a club) seems to be when any injury, be it ever so small, is actually done to the person of a man, in an angry or revengeful, or rude, or insolent manner, as by spitting in his face, or in any manner touching him in anger, or violently justling him out of the way, and the like. 1 *Haw.* 134.

From hence it clearly follows, that a person charged with an assault and battery may be found guilty of the assault, and acquitted of the battery: but every battery includes an assault; therefore on an indictment of assault and battery, in which the assault is ill laid, if the defendant be convicted of the battery, it is sufficient. *Hawk.* 134.

Though there are many ancient opinions to the contrary, it seems now agreed, that no

words

words whatsoever can amount to an assault. 1 *Hawk* 134.

The offender is subject both to an action at the suit of the party wherein he shall render damages; and also to an indictment at the suit of the King, wherein he shall be fined according to the heinousness of the offence.

By the *Stat.* 9 *Ann. c.* 16. the assaulting a privy counsellor in the execution of his office, is felony without benefit of clergy. Assaulting a privy counsellor.

By the *Stat. Geo.* 1. *c.* 23. *Sect.* 11. If any person shall wilfully and maliciously assault any person in the public streets or highways, with an intent to tear, spoil, cut, burn or deface the garments or clothes of such person or persons, then all and every person so offending being thereof lawfully convicted, shall be adjudged to be guilty of felony; and the courts before whom such offender shall be tried shall have full power of transporting such felons for the space of seven years. Assaulting to spoil clothes, &c.

By the *Stat.* 7. *Geo.* 2. *c.* 21. Assaulting with intent to rob, is made felony and transportation. Assaulting with intent to rob.

Any person may justify an assault, in defending his person, or that of his wife, or master, or parent or child within age; and even a wounding may be justified in defence of his person, but not of his possessions. 3 *Salk.* 46.

Also, If an officer who has a lawful warrant lay hands on another to arrest him, or if a parent reasonably chastise his child, a master his servant, a school-master his scholar, a gaoler his prisoner, and as some say, even a husband

husband his wife, or if one confine a friend who is mad, and bind and beat him properly in his circumstances; or if a man force a sword from one who offers to kill another therewith; in all these and such like cases it is justifiable. 1 *Hawk.* 130.

A person may justify an assault and battery of another who menaces or assaults him, and attempts to beat him from his lawful water-course or highways. *Pult.* 42.

Where a person in his own defence beats another who first assaults him, he may take advantage thereof either upon an indictment, or upon an action; but with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he must plead it specially. 1 *Haw.* 134.

And if any person comes into my house, and refuses to go out, I may justify laying hold of him, and turning him out. *Nelf. Assault.*

Bastards.

Origin of the word bastards.

THE word bastard seems to have been borrowed from the French *batard*, or from the Saxons; and to be compounded of *base*, vile, or ignoble, and *start*, or *stert*, a rise or original. By the common people in the north it is still pronounced *bastart*, denoting a person sprung from a vile or spurious origin; even as an *upstart* in general is a person suddenly arisen from a mean extraction.

We

We term all by the name of baſtards, ſays ord *Coke*, born out of lawful marriage. By e common law, if the huſband be within the ur ſeas, that is, within the juriſdiction of e king of *England*, if the wife hath iſſue, proof is to be admitted to prove the child baſtard, unleſs the huſband hath an ap- rent impoſſibility of procreation; ſuch ue is baſtard, though he be born within arriage. But if the iſſue be born within a onth, or a day, after marriage between rties of full lawful age, the child is legiti- ate. 1 *Inſt.* 244.

Baſtard born in lawful marriage.

By *Stat.* 18 *Eliz. c.* 3. *Sect.* 2. Concerning ſtards begotten and born out of lawful mar- ge (an offence againſt God's law and an's law) ſuch baſtards being now left to kept at the charge of the pariſh, where ey be born, to the great burden of ſuch iſh, and in the defrauding of the relief of impotent and aged, true poor of the ſame iſh, and to the evil example and encou- gement of lewd life: it is enacted that two tices of the peace (whereof one to be of the orum) in or next unto the limits where pariſh church is, within which pariſh h baſtard ſhall be born, upon examination the cauſe and circumſtance, ſhall and may their diſcretion take order, as well for the niſhment of the mother and reputed father ſuch baſtard child, as for the better relief every ſuch pariſh; and ſhall and may ewiſe take order for the keeping of every h baſtard child, by charging ſuch mother reputed father with payment of money weekly

A proviſion for keeping of baſtards.

weekly, or ſuſtentation for the relief of ſuch child, in ſuch wiſe as they ſhall think meet and convenient: and if after the ſame order by them ſubſcribed under their hands, any of the ſaid perſons, *viz.* mother or reputed father, upon notice thereof, ſhall not for their part obſerve and perform the ſaid order, that then every ſuch party ſo making default in not performing the ſaid order, to be committed to ward to the common gaol, there to remain without bail or mainpriſe, except they ſhall put in ſufficient ſecurity to perform the ſaid order, or elſe perſonally to appear at the next general ſeſſions of the peace to be holden in that county, where ſuch order ſhall be taken; and alſo to abide ſuch order as the ſaid juſtices or the greater part of them there and there ſhall take in that behalf; and that if at the ſaid ſeſſions the ſaid juſtices ſhall take no other order, then to abide and perform the order before made as aforeſaid.

And by the *Stat.* 7 *Jac.* 1. *c.* 4. *Sect.* 7. The juſtices of peace ſhall commit every lewd woman who ſhall have any baſtard which may be chargeable to the pariſh to the houſe of correction, there to be puniſhed and ſet to work during one year. And if ſhe ſhall offend again, then to remain until ſhe put in ſureties for her good behaviour not to offend again.

Concealing the death of a baſtard child is murder.

Any woman who ſhall be delivered of any iſſue of her body, which being born alive ſhould by the laws of this realm be born a baſtard, and ſhe endeavour privately, either by drowning or ſecret burying thereof, or

ny other ways, either by herself or the procuring of others, so to conceal the death of such child as that it may not come to light, whether it were born alive or not, but be concealed, she shall suffer death as in case of murder, except when she can prove by one witness at the least, that the child was born dead. 21 *Jac.* 1. *c.* 27.

By the *Stat.* 13 & 14 *Car.* 2. *c.* 12. *sect.* 9. Whereas it often happens that the putative fathers and lewd mothers of bastard children run away out of the parish, and sometimes out of the county, and leave the said bastard children upon the charge of the parish where they are born, though such putative father and mother have estates sufficient to discharge such parish: be it enacted, that it shall be lawful for the churchwardens and overseers of such parish, where any bastard child shall be born, to take and seize so much of the goods and chattels, and to receive so much of annual rents or profits of the lands of such putative father or lewd mother, as shall be ordered by any two justices as aforesaid, towards the discharge of the parish, to be confirmed at the sessions, for bringing up and providing for such bastard child: and thereupon it shall be lawful for the sessions to make an order for the churchwardens or overseers of such parish to dispose of the goods or so much of them for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions, as aforesaid, of his or her lands.

Putative fathers of bastards running away, how to be proceeded against.

One charged on oath with being the father of a baſtard may be apprehended.

Any ſingle woman who ſhall be delivere of a baſtard child likely to become chargeabl to any pariſh, or ſhall declare herſelf wit child, and that ſuch child is likely to be bor a baſtard, and to be chargeable to any pariſh and ſhall, in examination to be taken in wri ting upon oath, before one juſtice, charge an perſon with having gotten her with child, i ſhall be lawful for ſuch juſtice upon applica tion by the overſeers of ſuch pariſh, or by an ſubſtantial houſeholder of an extraparochia place, to iſſue his warrant for apprehendin him, and bringing him before any of his ma jeſty's juſtices of ſuch county; and the juſ tice before whom he ſhall be brought is re quired to commit him to the common gaol o houſe of correction, unleſs he give ſecurity t indemnify ſuch pariſh, or ſhall enter into recognizance with ſufficient ſurety, to appea at the next quarter-ſeſſions, and to perfor ſuch orders as ſhall be made in purſuance o the act, 18 *Eliz. c.* 3. If the woman ſha die or be married before ſhe be delivered, o ſhall miſcarry of ſuch child, or ſhall appea not to have been with child, ſuch perſon ſha be diſcharged from his recognizance, or re leaſed out of cuſtody. 6 *G.* 2. *c.* 31. *ſect* 1, 2.

It ſhall not be lawful for any juſtice of th peace to ſend for any woman before ſhe ſha be delivered, and one month after, in orde to her being examined concerning her preg nancy; or to compel any woman, before ſh be delivered to anſwer any queſtions con cerning her pregnancy.

M

M. 6 *G.* 2. *Lomax* and *Holmden.* In ejectment the question on a trial at bar was, whether the lessor was son and heir of *Caleb Lomax*, Esq; deceased; which depended on the question of his mother's marriage. And that being fully proved, and evidence given of the husband's being frequently at *London*, where the mother lived, so that access must be presumed, the defendants were admitted to give evidence of his inability from a bad habit of body. But their evidence not going to an impossibility, but an improbability only, that was not thought sufficient, and there was a verdict for the plaintiff. *Str.* 940.

Formerly, it is said, if the husband was within the four seas, no proof of non-access to his wife was admitted, but the child was deemed to be his; but as this notion was built on no rational foundation, it is now entirely departed from; and though the husband and wife are both in *England*, if there is sufficient proof that he had no access to her, the child will be a bastard. This was determined in the case of *Pendrell* and *Pendrell. M.* 5 *G.* 2. which was an issue out of Chancery, to try whether the plaintiff was the heir at law of one *Thomas Pendrell.* It was agreed, that the plaintiff's father and mother were married, and cohabited for some months; that they parted, she staying in *London*, and he going into *Staffordshire*; that at the end of three years the plaintiff was born. There being some doubt upon the evidence, whether the husband had

not been in *London* within the last year, it was sent to be tried. And the plaintiff rested at first upon the presumption of law in favour of legitimacy, which was encountered by strong evidence of no access. And it was agreed by court and counsel, on the trial at *Guildhall*, before Lord Ch. Just. *Raymond*, that the old doctrine of being within the four seas was not to take place, but the jury were at liberty to consider of the point of access, which they did, and found against the plaintiff. The court of Chancery acquiesced in this determination. *Str.* 925. *Andr.* 9.

Child born during a divorce.

M. 5 *An. St. George's and St. Margaret's Westminster.* When a woman is separated from her husband by a divorce, *a mensa et thoro*, the children she has during the separation are bastards; for a due obedience to the sentence shall be intended, unless the contrary be shewed: but if a husband and wife, without sentence, shall part and live separate, the children shall be legitimate, and so deemed till the contrary be proved, for access shall be intended. But if special verdict find the man had no access, it is a bastard; this was the opinion of Lord *Hale*, in the case of *Dickins and Collins*. 1 *Salk.* 123.

Widow having a child after the husband's death.

The law hath not appointed an exact certain time, for the birth of legitimate issue, by the widow after the death of her husband. 1 *Danv.* 726.

M. 7 *J. Alsop* and *Bowtrell.* The question was, whether the woman having been delivered of a child forty weeks and nine days after her husband's death, such child should be deemed

deemed a bastard. And it being proved, that her late husband's father had much abused her, and caused her to lie in the streets; and three physicians made oath, that the child came in time convenient to be the child of the party who died; and that the usual time for a woman to go with child, is nine months and ten days, *to wit*, solar months, thirty days to the month, and not lunar months; and that on account of the want of strength in the woman or the child, or on account of ill usage, she might be a longer time, even to the end of ten months or more. They also affirmed, that a perfect birth may be at seventh months, according to the strength of the mother or child, which is as long before the time of the proper birth. And for the same reason it may be as long deferred by accident, which is commonly occasioned by infirmities of the body, or passions of the mind. And the child was adjudged to be legitimate. *Cro. Jac.* 541.

M. 11 *G. K.* and *Chandler.* Indictment for secreting a woman pregnant with an illegitimate child, so that she could not attend to give evidence concerning the father. The defendant demurred. And judgment was given for the defendant; for the child cannot be illegitimate before it is born, there being always a possibility that she may be married before its birth, and it may be born in lawful wedlock. Ld. *Raym.* 1368.

M. 21. *c.* 2. *Burwell's case.* Two justices of the peace order the reputed father to pay so much a week to the parish, till the

child ſhould be twelve years old. By the court this was held to be wrong; becauſe the father might take it away when he pleaſed; and therefore the order ought to have been, that he ſhould pay ſo long as the child ſhould continue chargeable to the pariſh. 1 *Ventr.* 48.

H. 9 *G* 2. *K. and Jenkins.* Motion to quaſh an order of two juſtices of the peace, whereby they adjudge that ſuch perſon is not the putative father, and in conſequence diſcharge him; and the rather, becauſe in ſuch a caſe the pariſh cannot appeal, becauſe an appeal is only when the party refuſes to give ſecurity to come to ſeſſions. And by the whole court, the two juſtices of the peace have no ſuch authority; for their power depends on the ſtatute of 18 *Eliz.* which is only to take order for puniſhment of the parties, and for relief of the pariſh, and this order is for neither the one nor the other. *Seſſ. c. v.* 2. 161. *Str.* 1050.

K. and *Street*, *M.* 1 *G.* 2. An order of baſtardy was made, to pay a weekly ſum, till the child was nine years of age, if it ſhould ſo long live. By the court it is a good order; for we cannot intend it able to provide for itſelf ſooner. *Str.* 788.

And it hath been adjudged, that in order to convict a woman by force of the ſtatute of 21 *J. c.* 27. there is no need that the indictment be drawn ſpecially, or conclude againſt the form of the ſtatute; for the ſtatute doth not make a new offence, but ſuch concealment an undeniable evidence of murder. 2 *Haw.* 438.

It hath likewiſe been agreed, that where a woman has endeavoured to conceal the death of ſuch child within the ſtatute, there requires no proof that ſuch child was born alive, or that there were any ſigns of hurt upon the body, but it ſhall be concluded that the child was born alive, and murdered by the mother. 2 *Haw.* 438. But as this law ſeemeth to be ſomewhat ſevere, it hath of late years been uſual, upon trials for this kind of murder, to require ſome preſumptive evidence that the child was born alive, before the other conſtrained preſumption is admitted, that becauſe the death was concealed, it was therefore killed by its parent. 4 *Blackſt. c.* 14. *page* 198.

It hath alſo been adjudged, that where a woman lay in a room by herſelf, and went to bed free from pain, and waking in the night, knocked for help, but could get none, and was delivered of a child, and put it in a trunk, and did not diſcover the matter till the following night, yet ſhe was not within the ſtatute, becauſe ſhe knocked for help. 2 *Haw.* 438.

If a woman confeſs herſelf with child beforehand, and afterwards be delivered, and nobody being with her, it is agreed that ſhe is not within the ſtatute, becauſe there was no intent of concealment; in ſuch caſes it muſt therefore appear by ſigns or marks of hurt upon the body, or ſome other way, that the child was born alive. 2 *Haw.* 438.

If any perſon gives a woman with child a potion to deſtroy ſuch child within her, and it

Giving a potion to procure abortion.

it operates so strongly as to kill her, this is murder; because it was not given her to cure her of a disease, but to destroy her child within her; and therefore he that gives her a potion for this purpose, must take the consequence, and if it kills the mother, it is murder. 1 *H. H.* 429. 30.

If a pregnant woman take, or another give her any potion to make an abortion, or if a man strike her, whereby the child within her is killed, though it be highly criminal, it is no murder, nor manslaughter, because it is not yet in *rerum natura*, nor can it be certainly or legally known whether it were killed or not. 1 *H. H.* 433. But if such child should be born alive, and afterwards die of the poison or bruises it received in the womb, it is murder in such as gave them. 1 *Haw.* 80. 4 *Blackst. c.* 14. *p.* 198.

A woman's examination before the child's birth, on the statute 6 Geo. 2. c. 31.

Middlesex. THE examination of——— of——— in the said county, single woman, taken on oath before me *R*——— *B*——— esquire, one of his Majesty's justices of the peace in and for the said county, this———day of———in the year———who saith, That she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the parish of———in the said county, and that ———of———in the said county———, is the father of the child.

Taken

Taken and signed the day and year above-written before me ———.

Middlesex. THE examination of —— of *A. B.* in the said county, single woman, taken upon oath before me *C. D.* one of his Majesty's justices of the peace in and for the said county, this —— day of —— in the year —— who saith, That on —— the —— day of —— now last past, at —— in the parish of ——— in the county aforesaid, she the said ——— was delivered of a (male or female) bastard child, and that the said bastard child is likely to become chargeable to the parish of ——; and that —— of —— in the said county, ——— did get her with child of the said bastard child.

Examination after the birth, on the above statute.

Taken and signed the day and year above-written before me ——.

KNOW all men by these presents, that we —— of ——— in the county of —— and ——— of ——— are held and firmly bound unto —— of —— in the said county (in trust for the parishioners of the said parish) in —— pounds of good and lawful money of *Great Britain*, to be paid to the said —— or their certain attorney, their executors, administrators or assigns. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each and every of our heirs, executors and administrators, firmly by these presents; sealed

Bond to indemnify the parish for a bastard child.

with our ſeals, and dated the——day of——in the——year of the reign of our ſovereign lord *George* the——of *Great Britain*, *France* and *Ireland* King, defender of the faith, and ſo forth, and in the year of our Lord——. The condition of this obligation is ſuch, that whereas——of——ſingle woman, hath in and by her voluntary examination, taken in writing and upon oath before———one of his Majeſty's juſtices of the peace in and for the ſaid county of———declared that ſhe is with child, and that the ſaid child is likely to be born a baſtard, and to be chargeable to the ſaid pariſh——and that the above bounden——is the father of the ſaid child.

[If it is after the birth, then ſay, That whereas——of——ſingle woman in her examination taken in writing upon oath, before me——one of his Majeſty's juſtices of the peace in and for the ſaid county hath declared, that on the———day of———now laſt paſt, at———in the pariſh of———in the county aforeſaid, ſhe the ſaid———was delivered of a (male or female) baſtard child, and that the ſaid baſtard child, is likely to become chargeable to the pariſh of——, and hath charged the above-bound——with having got her with child of the ſaid baſtard child;] if therefore the ſaid——and——or either of them, their or either of their heirs, executors or adminiſtrators, do and ſhall from time to time, and at all times hereafter, fully and clearly indemnify and ſave harmleſs, as well the above named churchwardens and overſeers of the poor of the pariſh of——and their ſucceſſors

for the time being, as alſo all and ſingular the other pariſhioners and inhabitants of the ſaid pariſh of——which now are, or hereafter ſhall be for the time being, of and from all manner of coſts, taxes, rates, aſſeſſments and charges whatſoever, for or by reaſon of the birth, education, and maintenance of the ſaid child, and of and from all actions, ſuits, troubles, and other charges and demands whatſoever, touching and concerning the ſame; that then this preſent obligation to be void; otherwiſe to remain in full force. Signed, ſealed and delivered (having been firſt duly ſtamped) in the preſence of——

The condition of this recognizance is ſuch, that if the ſaid ——— do and ſhall appear at the next general quarter-ſeſſions (or the next general ſeſſions) of the peace to be holden for the ſaid county, and ſhall then and there abide and perform ſuch order or orders as ſhall be made in purſuance of an act paſſed in the eighteenth year of the reign of her late Majeſty Queen *Elizabeth*, concerning baſtards begotten and born out of lawful matrimony, upon the complaint of the churchwardens and overſeers of the pariſh of——— in the ſaid county, for begetting a child on the body of ———, ſingle woman; which child is likely to be born a baſtard, and to be chargeable to the ſaid pariſh of——, then this recognizance to be void, or otherwiſe to remain of force.

Condition of a recognizance for the father to appear at ſeſſions, 6 Geo 2. c. 31.

There is an act of the 13 *Geo.* 3. for the better regulating of lying-in hoſpitals, and to provide for the ſettlement of baſtard children born in ſuch hoſpitals. As, through the humane aſ-

sistance of well-disposed persons, many hospitals have been established for the charitable reception of pregnant women, but inconveniencies having arisen from the number of bastard children born in such hospitals, which have become heavy burdens, and occasioned unreasonable charges upon those parishes wherein such hospitals and places have been instituted to their great oppression: And as it would tend, as well to promote the interest of such hospitals and places as to give a seasonable relief to such parishes, if a law was made to regulate the settlement of such bastard children; it is enacted, That after *November* 1, 1773, no hospital or place shall be established, used, or appropriated, for the publick reception of pregnant women, under public or private support, regulation, and management, in any parish in *England*, unless a licence shall be first had, in manner after mentioned, from the justices, at some of their general quarter-sessions to be held for the county, riding, city, or corporation, wherein such hospital shall be situated; and such justices are to grant such licence to any person who shall apply for the same, such person paying 40*s.* for every such licence to the clerk of the peace of such county, riding or division, or to the town clerk of such city or corporation, as a perquisite for his trouble, and as a fund to defray the expence of the stamp and parchment that shall be used for the grant of such licence.

Of bastards born in lying-in hospitals.

Licence to be had from the justices.

Such licence to be stampt.

Every such licence shall be written on parchment, and stampt with a 5*s.* stamp; and

and a copy ſhall be entered in a book, to be kept for that purpoſe by ſuch clerk of the peace, or town clerk, and preſerved as a public regiſter amongſt the records of the county, riding, diviſion, city, or corporation, to be inſpected by any perſon on payment of 1*s.* and every ſuch licence ſhall be ſigned by two or more juſtices, at their general quarter-ſeſſions, and ſhall intitle the perſon to whom ſuch licence ſhall be granted to keep one hoſpital, houſe, or place, and no more, for the public or charitable reception of pregnant women.

What are to be deemed hoſpitals.

As well all hoſpitals, houſes, and places, eſtabliſhed, uſed, or appropriated, for the public reception of pregnant women, and ſupported by charitable contributions, for the purpoſes of the delivery or lying-in of ſuch pregnant women, as all other hoſpitals, houſes, or places, that may be eſtabliſhed, and appropriated, in like manner, for the like purpoſes, ſhall be deemed to be hoſpitals and places within the true intent of the act.

Inſcription to be fixed over the door.

That it may be the more eaſily known what hoſpitals, houſes, or places, ſhall have been licenſed purſuant to the act, there ſhall be fixed and kept up over the door, or public entrance, of every hoſpital, *&c.* an inſcription in large letters, in the following words; *videlicet*, LICENSED FOR THE PUBLICK RECEPTION OF PREGNANT WOMEN, PURSUANT TO AN ACT OF PARLIAMENT PASSED IN THE THIRTEENTH YEAR OF THE REIGN OF KING *GEORGE* THE THIRD, and the

the affixing and keeping ſuch inſcription ſhall be a condition in every ſuch licence; and in caſe ſuch inſcription ſhall not be fixed and kept over the door or public entrance of ſuch hoſpital, *&c.* ſuch licence ſhall become null and void.

Such baſtard to follow the mother's ſettlement.

No baſtard child, born in any ſuch hoſpital, or place, ſhall be legally ſettled in, or intitled to, relief as a pariſhioner, from the pariſh wherein ſuch hoſpital, or place, ſhall be ſituated; but every ſuch child ſhall follow the mother's ſettlement, and immediately gain a ſettlement in the pariſh where his or her mother was laſt legally ſettled.

Who are to pay the charges of removal.

In caſe it ſhall become neceſſary to remove the mother, and the child ſo born a baſtard, from the pariſh in which ſuch hoſpital ſhall be ſituated, to the pariſh to which ſuch woman ſhall belong, ſuch pariſh, being within 20 miles of ſuch hoſpital, to which ſhe ſhall be ſo removed, ſhall be chargeable with, and liable to the payment of all charges attending ſuch removals; ſuch charges to be allowed by any juſtice for the county, riding, diviſion, *&c.* in which the pariſh ſhall be ſituated, to which ſuch mother and child ſhall be removed: And if ſuch charges, after being allowed as aforeſaid, and demand made in writing, directed to the churchwardens or overſeers of the pariſh to which ſuch mother and child ſhall be removed, ſhall not be paid within two days after ſuch demand; then any of his Majeſty's juſtices, for the county, riding, diviſion, *&c.* in which the pariſh ſhall be ſituated to which ſuch mother and child ſhall

ſhall be removed, by warrant under his hand and ſeal, may levy the ſame by diſtreſs and ſale of the goods and chattels of the churchwardens or overſeers making ſuch refuſal, or on the goods and chattels of any of them.

All officers belonging to the pariſh wherein the mother of ſuch child ſo born a baſtard ſhall have been laſt legally ſettled, and all magiſtrates of the county, riding, diviſion, *&c.* wherein ſuch pariſh ſhall be ſituated, ſhall have power to apprehend the reputed father of ſuch baſtard child, to take ſecurity for the indemnity of the pariſh, and to puniſh the parents, and to do every other matter relative to ſuch caſe of baſtardy, in manner, and with the ſame powers, as ſuch magiſtrates or officers might or would have had in caſe ſuch child had been born in ſuch pariſh or place.

Pariſh officers may apprehend the father.

Nothing contained ſhall extend to alter the law, as it now ſtands, relative to the ſettlement of baſtard children ſo born in caſes where the mother's ſettlement cannot be aſcertained and determined.

The owner, keeper, governor, maſter, ſecretary, clerk, or perſon, who ſhall have, or to whom ſhall be intruſted the care or management of ſuch hoſpital, or place, ſhall, before the admiſſion of any pregnant woman into ſuch hoſpital, or place, forthwith, (unleſs prevented by ſickneſs), take ſuch woman before ſome juſtice for the county, riding, diviſion, *&c.* where ſuch hoſpital, or place, is ſituated, which juſtice is to examine her upon oath, whether ſhe is married or ſingle:

The pregnant woman to be taken before a juſtice.

And

And in case such pregnant woman shall not be able, at the time of admission, to go before such justice, and be examined as aforesaid; then the said owner, keeper, governor, or other person, as aforesaid, so soon as such woman shall be sufficiently recovered, may take such woman before such justice, to be by him examined: And all the particulars of such examination, taken upon oath, as aforesaid, shall be entered in a book, to be provided for that purpose by the owner, keeper, governor, or person, and signed by the justice before whom such examination is taken.

Or produce an affidavit.

If any woman, on admission into such hospital or place, shall produce an affidavit, sworn by her before such justice for the city of *London*, or for the county, riding, or place, wherein such hospital or place shall be situated, that she is a married or a single woman, which affidavit shall be kept at every such hospital, or place; then such woman shall not be liable by the act to go before any justice, or to be further examined on oath as to her marriage.

Notice of delivery to be given to the overseer, &c.

If any woman shall be delivered of a bastard child in such hospital, such owner, keeper, governor, master, or other person, shall four days at the least before any such woman shall be discharged, give personal notice, in writing, of such delivery, to be left at the usual place of abode of the overseer or churchwarden of such parish wherein such hospital, or place, shall be situated; and such overseer or churchwarden, is required, after such notice given, to attend at such hospital, or place, within

within the time notified, and ſhall convey every ſuch woman before ſome juſtice of the county, riding, diviſion, &c. where ſuch birth shall happen, who ſhall examine ſuch woman upon oath relative to her laſt legal ſettlement, and certify, in writing, to ſuch overſeer or churchwarden the whole of ſuch examination, who ſhall cauſe the ſame to be depoſited among the books belonging to ſuch pariſh.

If at any time ſuch overſeer or churchwarden ſhall, upon ſuch attendance, be informed by ſuch owner, keeper, or perſon, that ſuch woman is not ſufficiently recovered to be taken out and carried before ſuch juſtice, he shall wait till a further notice ſhall, in like manner, be given; and ſuch notices, from time to time, ſhall be repeated as occaſion may require; and every overſeer and churchwarden, who ſhall receive the ſame, is required to pay due attention thereto.

Every owner, keeper, governor, maſter, secretary, clerk, or perſon, may detain in ſuch hoſpital, or place, ſuch woman ſo delivered of a baſtard child, till ſhe ſhall be adjudged in a fit condition to be diſcharged, and until ſhe ſhall have been examined before ſome juſtice, as aforeſaid, with reſpect to the place of her laſt legal ſettlement.

Nothing ſhall extend to impower any perſon to keep or detain in ſuch hoſpital, any woman ſo delivered of a baſtard child for a longer time than ſix weeks after the birth of ſuch child, unleſs it ſhall be done by her own free conſent. Not to detain her more than ſix weeks.

Every

Penalty of owners, overseers, &c. not complying with the act.

Every owner, keeper, governor, master, or person, who shall wilfully neglect to comply with the directions of the act, shall forfeit, for every refusal, 50 *l.* and such overseer or churchwarden who shall in like manner neglect to comply with the directions of the act, shall, for every refusal, forfeit 10 *l.* which penalties, shall be recovered, with full costs, by action of debt, bill, *&c.* in any court of record at *Westminster*, by any person who shall sue for the same; and such forfeitures, when recovered, shall be applied, one moiety to the use of the poor of the parish where such offence shall have been committed, and the other to the person who shall sue for and recover the same.

Defendant may plead the general issue,

If any action shall be commenced against any person for any thing by him done in pursuance of the act, the defendant, in such suit, may plead the general issue, and give the act and the special matter, in evidence, at any trial to be had thereupon, and that the same was done in pursuance and by the authority of the act; and if afterwards a verdict shall pass for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, or judgment shall be given against him, upon demurrer, or otherwise; then such defendant shall have treble costs awarded to him against such plaintiff.

Action must be brought in 6 months.

No such action shall be brought by virtue of the act, unless commenced within six calendar months after the offence committed.

The act shall be deemed a public act; and as such taken notice of by all judges, &c. without

without specially pleading the same. 13 *Geo.* 1. *c.* 82.

Bread.

BY the 31 *G.* 2. *c.* 29. *s.* 21. it is enacted, the several sorts of bread which shall be made for sale, shall be well made, and in their several degrees, according to the goodness of the several sorts of flour whereof it ought to be made; and no allum, or mixture in which allum shall be a part thereof, or any other ingredient or mixture (except the genuine meal or flour, and common salt, pure water, eggs, milk, yeast and barm, or such leaven as shall be allowed to be put therein by those who have set the assize, and where no assize shall be set, then such leaven as any magistrate or justice of the peace within his jurisdiction shall allow to be used in making of bread) shall be put into, or used in making dough, or any bread to be sold, or as leaven to ferment any dough, or on any other account, in the trade of making bread, on pain that every person (except a servant, or journeyman) who shall knowingly offend, and shall be convicted thereof by confession, or oath of one witness, before any magistrate or justice, shall forfeit not exceeding 10 *l.* nor less than 40 *s.* or shall by warrant of such magistrate be committed to the house of correction, or some prison of the county, city, town, &c. where the offence shall have been committed,

True making of Bread.

mitted, or the offender shall be apprehended there to be kept to hard labour, not exceeding one month, nor less than ten days from the time of his commitment, as such magistrate shall think fit. If any servant or journeyman baker shall knowingly offend in the premisses, and be convicted thereof as aforesaid, he shall forfeit not exceeding 5 *l.* nor less than 20 *s.* or be committed to the house of correction or prison as aforesaid. And it shall be lawful for the magistrate before whom he shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, his place of abode, and offence, to be published in some publick news-paper, in or near the county, city or place where such offence shall be committed.

Adulterating meal or flour.

It is also enacted, that no person shall knowingly put into any corn, meal, or flour, which shall be manufactured for sale, either at the time of grinding, dressing or bolting the same, or at any other time, any ingredient or mixture; or shall knowingly sell, or expose to sale, any flour of one sort of grain, for the flour of any other sort of grain, or any thing as or for, or mixed with the flour of any grain, which shall not be the real and genuine flour of the grain the same shall import to be, on pain of forfeiting, not exceeding 5 *l.* nor less than 40 *s.* *s.* 22.

Undue mixtures of meal.

It is further enacted, that no person shall knowingly put into any bread made for sale, any mixture of flour of any other sort of grain than what the same shall import to be, and shall be allowed to be made of in pur-

suance

ance of this act; or shall put into any ead made for sale, any larger or other proortion of any other or different sort of grain, the meal or flour thereof, than what shall appointed to be put therein by this act; or y mixture in lieu of flour, which shall not ally be the genuine flour the same shall imort to be, on pain of forfeiting, not exceedg 5 *l.* nor less than 20 *s.* *f.* 23.

It is further enacted, that if any person all make bread for sale, or shall expose to le, any bread which shall be deficient in eight, according to the assize which shall e set, he shall forfeit not more than 5 *s.* nor s than 1 *s.* for every ounce wanting in the eight which every such loaf ought to be f; and for every loaf wanting less than an nce, shall forfeit not exceeding 2 *s.* 6 *d.* nor s than 6 *d.* as the magistrate before whom ch bread shall be brought shall think fit; as such bread which shall be complained of r wanting weight, in any city, town-corpoate, borough, liberty or franchise, or within e bills of mortality, shall be brought before me magistrate, having jurisdiction in the emisses, and weighed before him, within enty-four hours after it shall have been aked, sold, or exposed to sale; and so as ch bread which shall be complained of, in y hundred, riding, division, liberty, rape, apentake, or place, shall be brought before me justice of the peace within such jurisiction, and weighed before him within three ys after it shall have been baked, sold, or xposed to sale; unless it shall be made out to

Penalty for deficiency in weight.

to the ſatisfaction of ſuch magiſtrate that ſuc deficiency in weight aroſe from ſome unavoid able accident, or was occaſioned by ſom contrivance, ſcheme, or confederacy. ſ. 24.

Mark.

Any perſon who ſhall make for ſale any ſo of bread whatſoever, ſhall cauſe to be fair marked on every loaf made, ſold, or expoſed t ſale as wheaten bread, a large roman W ; an upon every loaf made, ſold, or expoſed to ſal as houſehold or brown bread, a large roma H ; on pain of forfeiting for every loaf n marked as above, any ſum not exceedin 20 ſ. nor leſs than 5 ſ. (except ſuch loav which ſhall be raſped at or after the pur chaſing thereof, by the deſire of any perſo who ſhall order or beſpeak the ſame.) ſ. 25.

Penalty of ſelling for a greater price than ſet by aſſize.

No perſon ſhall aſk or take, for any bre which he ſhall ſell or expoſe to ſale, an greater price than ſuch bread ſhall be aſcer tained to be ſold at by the aſſize ; and n baker, who ſhall make any bread for ſal ſhall refuſe to ſell any loaf of any of the ſor of bread which in purſuance of this act ſha be allowed to be made, to any perſon o perſons who ſhall tender ready money for th ſame, at the price ſet for the ſame by the a ſize, when ſuch perſon ſhall have any lo in his poſſeſſion to be ſold, more than ſha be requiſite for the neceſſary uſe of his fa mily, or his cuſtomers, and which it ſhall b incumbent on ſuch baker or other perſo complained of to prove before the magiſtra or juſtice to whom ſuch complaint ſhall b made; on pain of forfeiting for every ſuc

offenc

ence, not exceeding 40 *s.* nor less than 5 *s.* *s.* 26.

No baker or person shall sell any bread of inferior quality to wheaten bread, at a gher price than household bread shall be t at by the assize, on pain of forfeiting (on nviction thereof, by confession, or oath one witness, before one justice) the sum 20 *s.* *s.* 27.

Bread inferior to wheaten not to be sold for a higher price than household.

It shall and may be lawful for any magirate, or for any peace officer, authorized by arrant of such magistrate, at seasonable mes in the day time, to enter into any house, op, stall, bakehouse, warehouse, &c. beonging to any baker or seller of bread, to arch for, view, weigh, and try all or any e bread, which shall be there found; and any bread shall be found to be wanting, ther in the goodness of the stuff, or deficient the due baking, or working thereof, or anting in the due weight, or not truly arked, or shall be of any other sort of bread han shall be allowed to be made by virtue f this act; any such magistrate, or peaceficer may seize the same; and such magirate may dispose thereof, as he he shall think t. *s.* 28.

Houses to be entred to search for bread.

By 31 *G.* 2. *c.* 29. *s.* 29. On informaion being given on oath, to any magistrate, f there being reasonable cause to suspect, that ny miller who grinds any grain for toll or eward, or any person who shall dress, bolt, r otherwise manufacture any flour for sale, r any maker of bread for sale, doth mix p with any meal or flour manufactured for sale,

Mills and other places may be entered to search for adulterated meal.

ſale, any mixture or ingredient, not the genuine produce of the grain ſuch flour ſhall import or ought to be, or whereby the purity of any meal or flour in the poſſeſſion of any ſuch miller, mealman, or baker, ſhall be adulterated, it ſhall be lawful for ſuch magiſtrate, and for any peace officer authorized by the warrant of ſuch magiſtrate, at ſeaſonable times of the day, to enter into any houſe, mill, ſhop, bakehouſe, ſtall, bolting-houſe, paſtry, warehouſe or outhouſe, belonging to any ſuch miller, mealman or baker, and to ſearch and examine whether any mixture or ingredient, not the genuine produce of the grain ſuch flour ſhall import, ſhall have been mixed with any flour in the poſſeſſion of any ſuch perſon, either in the grinding of any grain at the mill, or in the dreſſing thereof, or whereby the purity of any flour ſhall be adulterated: and if it ſhall appear that any offence hath been committed in any place allowed to be ſearched, it ſhall be lawful for any magiſtrate or officer, authorized as aforeſaid, to ſeize any flour which ſhall be found to have been adulterated, and all ingredients which ſhall be found and deemed to have been uſed or intended to be uſed for ſuch adulteration; and the ſame ſeiſed by ſuch peace-officer ſhall forthwith be carried to ſome magiſtrate; and if any magiſtrate, who ſhall make any ſeizure in purſuance of this act, or to whom any thing ſeiſed ſhall be brought, ſhall adjudge that any ingredients not being the genuine produce of the grain, any ſuch flour which ſhall have been ſo ſeized

l import and ought to be, ſhall have been into any ſuch flour, or that the purity of ſuch flour ſo ſeized was adulterated by ingredient put therein, in ſuch caſe, he ereby required to diſpoſe of the ſame as hall think proper.

t is alſo enacted, by the ſame ſtatute, *ſ.* That every miller, mealman, baker, or r of bread, in whoſe houſe, mill, ſhop, ehouſe, ſtall, boltinghouſe, paſtry, ware-ſe, outhouſe, or poſſeſſion, any ingredi- ſhall be found, which ſhall be deemed by magiſtrate to have been lodged there with nt to have adulterated the purity of flour bread, ſhall, on conviction by confeſſion, ath of one witneſs, before any ſuch ma-rate, forfeit not more than 10 *l.* nor leſs n 40 *s.* unleſs the party charged ſhall make ppear to the ſatisfaction of ſuch magi-e that ſuch ingredient was not lodged there n intent to have been put into any flour, o have adulterated the ſame, but was there ſome other lawful purpoſe. And it ſhall may be lawful for ſuch magiſtrate, out of forfeiture, to cauſe the offender's name, e of abode, and offence, to be publiſhed ome news-paper publiſhed in or near the e where ſuch offence ſhall be committed. o.

Penalty for having in poſſeſſion unlawful ingredients.

ny perſon who ſhall obſtruct ſuch ſearch, he ſeizure of bread or ingredients as afore-, ſhall forfeit not more than 5 *l.* nor leſs 20 *s.* *ſ.* 31.

Penalty of obſtructing ſearch.

any baker ſhall make complaint to any iſtrate, and make appear by the oath of

Journeymen offending

any credible witness, that any offence hath been charged with shall have been occasioned by the wilful neglect or default any journeyman or servant employed by hi such magistrate shall issue his warrant bring such servant before him, or any ma strate where the offender can be found; on his being brought before such magistra he shall examine into the matter of such co plaint, and upon proof thereof, upon o shall under his hand adjudge what reasona sum shall be paid by such servant to his m ster, by way of recompence for what he sh have paid on account of the wilful negl or default of such servant: and if such jo neyman or servant shall neglect or refuse, conviction, to pay the same immediate such magistrate shall commit him to the ho of correction, or some other prison, there be kept to hard labour not exceeding month, unless payment thereof shall be m before the expiration of the said term of month. *s.* 33.

Manner of convicting offenders.

It is also enacted by the same statute, *s.* That it shall be lawful for the mayor of *L don*, or any one of the aldermen there within the said city, or liberties; and for justice of the peace within the several co ties, ridings, divisions, cities, towns cor rate, *&c.* to hear and determine, in a su mary way, all offences against this act; order thereto to summon before him the p accused; and if he shall neglect to app or offer some reasonable excuse for his fault, then on oath made of the offence co

mit

nitted by one witneſs, ſuch magiſtrate ſhall
ſue his warrant for apprehending the offen-
er: and on appearance of the offender, or
he ſhall not appear, on notice being given
o, or left for him at his uſual place of abode,
r if he cannot be apprehended on warrant
rant:d againſt him as aforeſaid, ſuch ma-
iſtrate ſhall proceed to inquire of the offence,
nd to examine any witneſſes offered on either
de upon oath, and ſhall convict or ac-
uit the party accuſed; and if on ſuch con-
iction, the penalty ſhall not be paid within
wenty-four hours after, ſuch magiſtrate ſhall
ſue his warrant to any peace-officer to make
iſtreſs; and if the offender ſhall convey his
oods out of the juriſdiction of ſuch magi-
rate, or a part thereof, ſo that the penalty
annot be levied, then ſome magiſtrate, within
hoſe juriſdiction the offender ſhall have re-
oved his goods, ſhall back ſuch warrant, and
hereupon the penalty ſhall be levied by
iſtreſs; and if the forfeiture ſhall not be
aid within five days, the diſtreſs ſhall be ap-
raiſed and ſold, rendering the overplus, after
educting the forfeiture, coſts, and charges;
ch charges to be aſcertained by the magi-
rate before whom the offender was convict-
d, or who backed the warrant, if either of
hem continue alive, and if not, by ſome
her magiſtrate where the offender was con-
icted; and for want of ſuch diſtreſs, every
ch magiſtrate, within whoſe juriſdiction ſuch
ffender ſhall be or reſide, ſhall commit him
the common gaol or houſe of correction
f the diviſion or place where the offender

ſhall be found, for one calendar month, unl
payment ſhall be ſooner made.

Application of the forfeitures.

By a general clauſe in the ſame act, 31
2. *c.* 29. *ſ.* 34. all penalties and forfeitu
ſhall be paid to the informer; but by
32 *G.* 2. *c.* 18. ſuch of the penalties
the ſaid act, as thereby are not particula
diſpoſed of, ſhall be, one moiety there
where the offender ſhall be convicted
confeſſion, or oath of one witneſs, to h
who ſhall inform and proſecute; and
other moiety, and alſo all penalties incur
on the weighing, trying or ſeizure of a
bread by any magiſtrate, ſhall be applied
the better carrying the ſaid act into e
cution, as ſuch magiſtrate ſhall think prop
ſ. 2.

Limitation of actions.

Provided always, that no perſon or p
ſons ſhall be convicted for any of the ſ
offences, unleſs the proſecution be co
menced within three days after the offe
committed. *ſ.* 42.

Saving of the right of others.

Provided alſo, that nothing herein co
tained ſhall extend to prejudice any right
cuſtom of the city of *London*, or of the l
of any leet, or clerk of a market, or the de
of *Weſtminſter*, or the high ſteward of *W*
minſter or his deputy, or of either of the u
verſities. *ſ.* 43, 45.

Proceedings where the aſſize has not been ſet.

What hath been ſaid above, as to the p
and weight of bread, and the like, proce
upon the ſuppoſition of an aſſize being
By the 3 *G.* 3. *c.* 11. regulations are ma

 altho

hough no assize is set, and further provisions e enacted, *viz.*

No loaf or loaves, called or deemed assize af or loaves, in the tables of the assize and ice of bread, in the 31 *G.* 2. and the weight which varies according to the price of ain, shall be made for or exposed to sale, in y place where loaves called prize loaves in e said tables shall be allowed to be sold at e same time; that is to say, no assize loaves the price of three pence, and prized loaves lled half quartern loaves, nor assize loaves the price of twelve pence, and prized aves called half peck loaves, nor assize aves of the price of eighteen-pence, and ized loaves called peck loaves, shall at the me time in any place be made for or exsed to sale, in order that unwary persons ay not be imposed on by buying assize loaves r prized loaves, or prized loaves for assize aves; on pain that every person offending all forfeit not more than 40 *s.* nor less an 10*s.* *f.* 10.

Every baker or maker of bread for sale shall bserve the same proportion as to weight, as here the assize is set; that is to say, every hite loaf of the price of 2 *d.* or under, shall eigh three parts in four of the weight of e wheaten loaf of the like price; and every heaten assize loaf of whatever price, shall eigh three parts in four of the weight of ery household assize loaf of the like price; nd every household assize loaf, shall weigh one ird part more than a wheaten assize loaf of

the like price; on pain of forfeiting not mor than 40 *s.* *ſ.* 4.

Every peck, half-peck, quarter of a peck and half a quarter of a peck loaf, made fo ſale of the flour of wheat, and called wheate bread, ſhall be ſold in proportion to eac other, as to price; and the like, as to loave of houſehold bread, which ſhall be ſold pro portionably to each other, and for on fourth leſs than wheaten bread of the ſam denomination; on pain of forfeiting for ever loaf, not more than 40 *s.* nor leſs than 10 *ſ.* 5.

The weight of every ſort of bread mad for or expoſed to ſale ſhall be in avoirdupo weight as follows: *viz.* the peck loaf, ſeven teen pounds ſix ounces; the half-peck loa eight pounds eleven ounces, the quarter of peck loaf, four pounds five ounces and half; the half a quarter of a peck loaf, tw pounds two ounces and three quarters, o pain of forfeiting for every ounce wantin and deficient not more than 5 *s.* nor leſs tha 1 *s.* and for leſs than an ounce not exceedin 2 *s.* 6 *d.* nor leſs than 6 *d.*; ſo as the ſame i any city, town corporate, or within the bil of mortality, be brought before a juſtice o the peace, and weighed before him withi twenty-four hours after the ſame ſhall hav been baked or found in any perſon's cuſtod for ſale, and elſewhere within three days unleſs it be made appear to the ſatisfactio of ſuch juſtice of the peace, that the defic ency in weight aroſe from ſome unavoidabl

accident

cident, or was occasioned by some contrivance or confederacy. *s.* 6.

By the same statute 3 *G.* 3. *c.* 11. *s.* 8. it is enacted, that every wheaten loaf shall be marked with a large Roman W. and every household loaf with a large Roman H: and if any person shall sell or expose to sale any such loaf unmarked (except such as shall be asked by the desire of the purchaser;) he shall forfeit for every such loaf, not more than 10 *s.* nor less than 10 *s.* unless it shall appear, to the satisfaction of the justice of the peace to whom complaint shall be made, that the omission arose from some unavoidable accident, or was occasioned by some contrivance or confederacy.

And by the same statute *s.* 9. it is enacted, that bread made of any other grain than wheat, shall be marked with some letter or letters not exceeding two, as the justices of the peace in the general, quarter, or special sessions shall order; which order shall be entered in a book, to which the bakers may in the day time resort, without fee; and the justices of the peace shall cause a copy thereof to be put or stuck up in some market town, or other public town or place within the division, or otherwise inserted in some public news-paper usually circulated there; and if the justices of the peace shall neglect to make such order, the baker shall mark every such loaf with any two distinct capital letters he shall think fit. And every person making or having in his custody for sale any such loaf made of other grain than wheat, which shall

not be so marked, so as the same may on view thereof be ascertained under what denomination it was made (except the same be rasped by the desire of the purchasers); shall forfeit not more than 40 s. nor less than 5 s. for every loaf not marked.

And it shall and may be lawful for any justice of the peace, or peace-officer authorized by warrant of such justice, to enter into any house, shop, or other place, of any baker or seller of bread, and to search, weigh, and try any bread which shall be there found; and if any bread shall be found to be deficient in weight, not truly marked, or deficient in the true working thereof, or wanting in the goodness of the stuff, or made with any mixture or flour of any other grain than the same shall import to be made with, or with any larger or other proportion of any other grain than what ought to be put therein, or with any ingredient, which by the said act ought not to be put therein, or with any thing in lieu of flour which shall not be the genuine flour the same shall import to be, or made with any leaven not allowed by the said former act, such justice of the peace, or peace officer, may seize the same, and dispose thereof to poor persons, as such justice shall think fit; and the maker, whose bread shall be found wanting in goodness, or made with undue mixture, or undue proportion, or made with any thing in lieu of flour, which shall not be the genuine flour the same shall import to be, or with any leaven not allowed by the said act, shall forfeit not more than 5 l. nor

nor less than 20*s.*; unless it shall appear that the default has arisen from some unavoidable accident, or some contrivance or confederacy. *s.* 10.

Any person obstructing or opposing any such search, or seizure, shall forfeit not more than 40 *s.* nor less than 20 *s.* *s.* 11.

One justice of the peace may hear and determine offences in the same manner as by the said former act. *s.* 14, 15.

Persons who are convicted on this act, shall not be prosecuted for the same offence under any other. *s.* 23.

An Act passed the 13 Geo. 3. *for the better regulating the Assize and making of Bread.*

As by act 31 *Geo.* 2. intituled, *An act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread*; and by act 3 *Geo.* 3. *cap.* 11. for explaning and amending the said recited act, two sorts of bread, made of wheat only, are allowed to be made for sale; *viz.* wheaten and household; whereby the flour, being the whole produce of the wheat, is so divided in the making of bread for sale, as that this standard wheaten bread, made according to the ancient order and custom of the realm, could be no longer made for sale: And as household bread, such as is intended by the said act of *Geo.* 2. to be made for sale, is not generally made for sale, whereby, and for want of the standard

wheaten bread being continued, many inconveniences have arisen, and many of the inferior classes of the people have been under a necessity of buying bread at a higher price than they could afford, to their great hurt and detriment: It is therefore enacted, That after *September* 29, 1773, a bread made of wheat as followeth; *viz.* of the flour of wheat, which flour, without mixture or division, shall be the whole produce of the grain, the bran or hull thereof excepted, and which shall weigh $\frac{3}{4}$ parts of the weight of the wheat whereof it shall be made, may be, at all times, allowed to be made, baked, exposed to or for sale, sold, and called a standard wheaten bread.

Loaf to be marked with the capital letters, S. W.

The makers of the said bread for sale shall mark every loaf thereof with the capital letters *S. W.* and the makers and sellers of the same may make and sell the same, altho' no assize be set of the weight, and in the proportions following; *viz.* every standard wheaten peck loaf shall always weigh 17 pounds 6 ounces avoirdupois; every half peck loaf 8 pounds 11 ounces, and every quartern loaf 4 pounds 5 ounces, and one half of an ounce avoirdupois; and every peck loaf, half peck loaf, and quartern loaf, shall always be sold, as to price, in proportion to each other respectively; and where wheaten and household bread, made as the law directs, shall be sold at the same time together with this standard wheaten bread, they be shall sold in proportion to each other, as followeth; *viz.* the same weight of

of wheaten bread as costs 8 *d.* the same weight of this standard wheaten bread shall cost 7 *d.* and the same weight of household bread shall cost 6 *d.* or seven standard wheaten assized loaves shall weigh equal to eight wheaten assized loaves, or to six household assized loaves of the same price, as near as may be.

The said standard wheaten bread shall not be made into, or exposed to or for sale, or sold as priced loaves, at one and the same time, together with assized loaves of the same standard wheaten bread.

All magistrates or other persons by the laws now in being authorised to fix the price of bread, are, whenever and where-ever they shall think proper to set the assize, or to fix the price of bread, in like manner, and at the same time, to set the assize on, or fix the price of the standard wheaten bread, the baker's allowance for baking being included according to the rates respectively set down in the following Table.

The following is

A TABLE

OF THE

ASSIZE and PRICE of STANDARD WHEATEN BREAD,

IN TWO PARTS.

Note, That this Table is framed for bread to be made of the whole produce of the wheat, except the Bran or hull thereof only; the ſaid produce to weigh three-fourths of the wheat whereof it is made.

PART THE FIRST; or, The ASSIZE TABLE,

Contains in column No I. the price of the buſhel of wheat, *Wincheſter* meaſure, from 2*s*. 9*d*. to 14*s*. 6*d*. the buſhel, the allowance of the magiſtrates to the baker for baking included: And in column No II. are

are the weights of the ſeveral loaves. So that at whatever price of the buſhel of wheat, with the allowance, the magiſtrates ſhall ſet the aſſize, the ſame price of wheat is to be found in column N° I. and even therewith, in column N° II. will be found the weights of the ſeveral loaves.

Note, That the ſame weight of ſtandard wheaten aſſized bread as coſts ſevenpence, of wheaten aſſized bread will coſt eight-pence, and of houſehold aſſized bread ſixpence: Or, ſeven ſtandard aſſized loaves will weigh eight wheaten aſſized loaves, or ſix houſehold aſſized loaves of the ſame price, as near as may be.

PART THE SECOND; or, The PRICE TABLE,

Contains in column N° II. the price of the buſhel of wheat, *Wincheſter* meaſure, from 2*s.* 9*d.* to 14*s.* 6*d.* the buſhel, the allowance of the magiſtrates to the baker for baking included: And in column N° I. are the prices of the peck, half peck, and quartern loaves. So that at whatever price of the buſhel of wheat, with the allowance, the magiſtrates ſhall fix the price

price of bread, the ſame price of wheat is to be found in column N° II. and even therewith, under N° I. will be found the prices of the ſeveral loaves.

Note, That the ſtandard wheaten peck loaf is always to weigh 17 *lb.* 6 *oz.* avoirdupois, and the half peck and quartern loaves in proportion; and when the ſaid peck loaf is ſold for fourteen-pence, the wheaten peck loaf is to be ſold for ſixteen-pence, and the houſehold peck loaf is to be ſold for twelve-pence, and always as near as may be in the ſame proportion. No half quartern loaves are to be made.

THE TABLE. (To face page 62.)

Nº I. The Price of the Bushel of Wheat and Baking.	Nº II. Part the First. The Assize Table. Small Bread. Penny.	Small Bread. Two Pence.	Large Assize Bread. Six-pence.	Large Assize Bread. Twelve Pence.	Large Assize Bread. Eighteen Pence.	Nº I. Part the Second. The Price Table. Prized Bread. Quartern Loaf.	Prized Bread. Half Peck Loaf.	Prized Bread. Peck Loaf.	Nº II. The Price of the Bushel of Wheat and Baking.
s. d.	oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	s. d.	s. d.	s. d.	s. d.
2 9	25 4	3 2 9	9 7 11	18 15 5	28 7 —	— 2¾	— 5½	— 11	2 9
3 —	23 3	2 14 5	8 11 —	17 6 1	26 1 1	— 3	— 6	1 —	3 —
3 3	21 6	2 10 12	8 — 5	16 — 11	24 1 —	— 3¼	— 6½	1 1	3 3
3 6	19 14	2 7 12	7 7 3	14 14 5	22 5 8	— 3½	— 7	1 2	3 6
3 9	18 9	2 5 1	6 15 4	13 14 7	20 13 11	— 3¾	— 7½	1 3	3 9
4 —	17 6	2 2 12	6 8 4	13 — 9	19 8 13	— 4	— 8	1 4	4 —
4 3	16 6	2 — 11	6 2 2	12 4 4	18 6 7	— 4¼	— 8½	1 5	4 3
4 6	15 7	1 14 4	5 12 11	11 9 6	17 6 1	— 4½	— 9	1 6	4 6
4 9	14 10	1 13 4	5 7 13	10 15 10	16 7 7	— 4¾	— 9½	1 7	4 9
5 —	13 14	1 11 13	5 3 7	10 6 13	15 10 4	— 5	— 10	1 8	5 —
5 3	13 4	1 10 8	4 15 7	9 14 14	14 14 5	— 5¼	— 10½	1 9	5 3
5 6	12 10	1 9 4	4 11 13	9 7 11	14 3 8	— 5½	— 11	1 10	5 6
5 9	12 1	1 8 3	4 8 9	9 1 1	13 9 10	— 5¾	— 11½	1 11	5 9
6 —	11 9	1 7 3	4 5 8	8 11 1	13 — 9	— 6	1 —	2 —	6 —
6 3	11 2	1 6 4	4 2 12	8 5 8	12 8 3	— 6¼	1 —½	2 1	6 3
6 6	10 11	1 5 6	4 — 3	8 — 5	12 — 8	— 6½	1 1	2 2	6 6
6 9	10 5	1 4 10	3 13 13	7 11 9	11 9 6	— 6¾	1 1½	2 3	6 9
7 —	9 15	1 3 14	3 11 9	7 7 3	11 2 12	— 7	1 2	2 4	7 —
7 3	9 9	1 3 3	3 9 8	7 3 1	10 12 9	— 7¼	1 2½	2 5	7 3
7 6	9 4	1 2 9	3 7 10	6 15 4	10 6 13	— 7½	1 3	2 6	7 6
7 9	9 —	1 1 15	3 5 13	6 11 10	10 1 7	— 7¾	1 3½	2 7	7 9
8 —	8 11	1 1 6	3 4 2	6 8 4	9 12 7	— 8	1 4	2 8	8 —
8 3	8 7	1 — 14	3 2 9	6 5 2	9 7 11	— 8¼	1 4½	2 9	8 3
8 6	8 3	1 — 6	3 1 1	6 2 2	9 3 3	— 8½	1 5	2 10	8 6
8 9	7 15	— 15 14	2 15 11	5 15 5	8 15 —	— 8¾	1 5½	2 11	8 9
9 —	7 12	— 15 7	2 14 5	5 12 11	8 11 —	— 9	1 6	3 —	9 —
9 3	7 8	— 15 —	2 13 1	5 10 3	8 7 4	— 9¼	1 6½	3 1	9 3
9 6	7 5	— 14 10	2 11 14	5 7 13	8 3 11	— 9½	1 7	3 2	9 6
9 9	7 2	— 14 4	2 10 12	5 5 9	8 — 5	— 9¾	1 7½	3 3	9 9
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11 —	6 5	— 12 10	2 5 15	4 11 13	7 1 12	— 11	1 10	3 8	11 —
11 3	6 3	— 12 6	2 5 1	4 10 2	6 15 4	— 11¼	1 10½	3 9	11 3
11 6	6 1	— 12 1	2 4 4	4 8 9	6 12 13	— 11½	1 11	3 10	11 6
11 9	5 15	— 11 13	2 3 8	4 7 —	6 10 8	— 11¾	1 11½	3 11	11 9
12 —	5 13	— 11 9	2 2 12	4 5 8	6 8 4	1 —	2 —	4 —	12 —
12 3	5 11	— 11 6	2 2 1	4 4 2	6 6 2	1 —¼	2 —½	4 1	12 3
12 6	5 9	— 11 2	2 1 6	4 2 12	6 4 2	1 —½	2 1	4 2	12 6
12 9	5 7	— 10 14	2 — 11	4 1 7	6 2 2	1 —¾	2 1½	4 3	12 9
13 —	5 6	— 10 11	2 — 1	4 — 3	6 — 4	1 1	2 2	4 4	13 —
13 3	5 4	— 10 8	1 15 8	3 14 15	5 14 7	1 1¼	2 2½	4 5	13 3
13 6	5 2	— 10 5	1 14 14	3 13 13	5 12 11	1 1½	2 3	4 6	13 6
13 9	5 1	— 10 2	1 14 5	3 12 11	5 11 —	1 1¾	2 3½	4 7	13 9
14 —	4 15	— 9 15	1 13 13	3 11 9	5 9 6	1 2	2 4	4 8	14 —
14 3	4 14	— 9 12	1 13 4	3 10 9	5 7 13	1 2¼	2 4½	4 9	14 3
14 6	4 13	— 9 9	1 12 12	3 9 8	5 6 5	1 2½	2 5	4 10	14 6

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All makers of bread for ſale, and others, who ſhall, after *September* 29, 1773, make and bake for ſale, and ſell the ſaid ſtandard wheaten bread, ſhall make and ſell the ſaid bread as directed by the act; and all ſuch makers of bread for ſale, *&c.* ſelling the ſaid bread, ſhall be liable to the ſame pains, penalties, *&c.* for miſdemeanour or neglect in the making, marking, ſelling, or expoſing to ſale, the ſaid ſtandard wheaten bread, as they are liable to by the laws now in being for miſdemeanour or neglect in reſpect to making, marking, ſelling, or expoſing to ſale, wheaten or houſehold bread.

Penalty for the miller impoſing upon the baker.

If any information ſhall be laid againſt any baker, for making, marking, baking, or expoſing to ſale, bread, purporting to be the ſtandard wheaten bread, made of flour, not being the whole produce of the wheat, the bran or hull excepted, and weighing $\frac{3}{4}$ parts of the weight of the wheat whereof it was made, and ſuch baker ſhall prove that he bought the ſaid flour, whereof his bread was made, for ſuch flour, of the miller or mealman, naming his name, and place of abode; in ſuch caſe, the baker ſhall ſtand clear and acquitted, and the miller or mealman ſo offending, ſhall forfeit the penalties directed to be paid in the caſe of adulterating corn, meal or flour, by act 31 *Geo.* 2.

Where magiſtrates or others, authoriſed as aforeſaid, ſhall have ſet an aſſize on, or fixed the price of the ſtandard wheaten bread, as directed by the act, all perſons are authoriſed to omit, if they think proper, the ſetting an

aſſize

affize upon, or fixing the price of any other sort of bread.

Justices may prohibit the making for three months.

After *September* 29, 1773, the justices of the peace, at any general or quarter session which shall be held within their counties, *&c.* may prohibit, for three months, (unless they shall see cause sooner to revoke the order for such prohibition,) the makers of bread for sale, from making for sale any other sorts of bread, purporting to be of a superior quality, and sold at a higher price than the standard wheaten bread aforesaid: provided, that no order for such prohibition do take place, until one calendar month at least after the date of the making thereof; and every order, which shall be so from time to time made, touching the premises, by such justices, shall be entered in a book, to be provided and kept for that purpose by such justices, and which book shall be inspected by the makers of bread for sale, within the respective jurisdiction of such justices, at all seasonable times in the day-time, and without fee or reward: and after the making such order, the justices who shall make the same, shall, with all convenient speed, cause a copy of such order to be affixed in some market or public town, within the division or part of the county, *&c.* in which such order is to be observed, or else such justices, within their jurisdictions, shall cause a copy of such order to be, with convenient speed after the making thereof, inserted in some public news-paper, in the county, riding, division

On giving one month's notice.

or place, in which such order is to be observed.

Within the city of *London*, and liberties, the company of bakers of the said city, and in any other city, county, division, *&c.* any baker or maker of bread for sale, may, within the jurisdiction to which he does belong, have an opportunity of offering to such justices, all such objections as such company of bakers, or maker of bread for sale, may think fit to offer against such prohibition as aforesaid, at the time when such justices shall have under consideration the ordering such prohibition.

Company of bakers, *&c.* may remonstrate with the justices.

Nothing contained shall extend to prevent the magistrates and others, who, by the laws now in being, are authorised to set an assize on bread, from allowing at all times, and during the time of such prohibition as aforesaid, if they shall think fit, any white loaves or wheaten loaves of the price of 1 *d.* or 2 *d.* to be made and sold, so that the said loaves be made, marked, baked, exposed to sale, and sold according to the regulations of *The Table of Assize and Price of Bread*, enacted by act 31 *Geo.* 2. intituled, *An act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread.*

Any baker or maker of bread for sale, may make, bake, expose to sale, and sell, such inferior and coarser bread, provided he sells such bread at a price under that of the household bread, as directed to be made and sold by

by act 31 *Geo.* 2. intituled, *An act for the due making of bread, and to regulate the price and assize thereof, and to punish persons who shall adulterate meal, flour, or bread*, although nothing in the act contained extends to the setting any assize thereon.

Where any baker of bread shall sell coarser bread at the assized household bread price, he shall be liable to the penalties inflicted by law.

Magistrates have the same power as in former acts.

Every magistrate, and others, as aforesaid, following the directions given, shall have the same powers to apply them, to all intents and purposes, relative to assizing, pricing, and regulating, the making, selling, or exposing to or for sale, the said standard wheaten bread, and punishing the makers, sellers, and exposers thereof to sale, for any misdemeanour or neglect, in the making, marking, selling, or exposing thereof, as they have by any law now in being, relative to assizing, pricing, making for sale, selling, or exposing to or for sale, any bread, and in as full and ample a manner as if the said powers were recited and enacted therein.

Not to prejudice any custom of London, leet, &c.

Nothing contained shall extend to prejudice any right or custom of the city of *London*, or any right or custom of lords of any leet, to set, enquire, and punish the breach of assize of bread within their leets or views of frank pledge, or the right of clerks of the market, in any place.

Not to prejudice the right of the dean and chapter of Westminster.

Neither the act, or any thing contained shall extend to prejudice the ancient right or custom of the dean of the collegiate church

of *Saint Peter*, *Weſtminſter*, or the high ſteward of the city of *Weſtminſter*, and the liberties thereof, or his deputy, to ſet, aſcertain, and appoint, the aſſize and weight of all ſorts of bread, to be ſold within the city of *Weſtminſter*, and the liberties thereof; but they may ſeverally, from time to time, ſet, aſcertain, and appoint, within the city of *Weſtminſter*, and the liberties thereof, the aſſize and weight of all ſorts of bread, which ſhall be made, ſold, or expoſed to ſale, by any perſon within the limits of the ſaid city of *Weſtminſter*, and the liberties thereof; and may enquire, and puniſh the breach of every ſuch aſſize and weight of bread as freely, in all reſpects, as they have heretofore been accuſtomed to do, and as if the act had never been made.

Or the two univerſities.

Neither the act, nor any thing contained, ſhall extend to prejudice the ancient right or cuſtom of the two univerſities of *Oxford* and *Cambridge*, or of their clerks of the market, or the practice within the ſeveral juriſdictions of the univerſities, uſed to ſet and appoint the aſſize and weight of all ſorts of bread to be ſold within their ſeveral juriſdictions; but they may ſeverally from time to time ſet, aſcertain and appoint, within their reſpective juriſdictions, the aſſize and weight of all ſorts of bread to be ſold, or expoſed to ſale, by any baker, or other perſon, within the limits of their juriſdictions, according to the true intent and meaning of the act; and ſhall enquire and puniſh the breach thereof, as they uſed to do, and as if the act had never been made.

All

All the laws in being, for the due making of bread, or regulating the price and assize thereof, or to punish persons who shall adulterate meal, flour, or bread, shall stand and remain in full force, in the whole, and every part thereof, not altered by the present act.

In boroughs and corporations one of the bailiffs, in the absence of the other, shall be authorised to set an assize on bread, under the said act, or this act, and to do all other matters and things therein, and hereby directed for setting the same.

Churchwardens.

Churchwardens a corporation.

A Churchwarden is a very ancient officer, and by the common law churchwardens are in the nature of a corporation to take care of the goods of the church.

How elected.

Churchwardens are elected by the minister and parishioners, in *Easter* week, yearly; and if they happen to disagree, the minister is to choose one, and the parishioners another; unless there be a custom to the contrary, which must be complied with. *Can.* 89.

When the custom for choosing churchwardens cannot take, recourse is to be had to the canons. *Stra.* 145.

But if there is no custom to the contrary, the election of churchwardens is in the parson and the parishioners. And the curate represents or stands in the place of the parson for the purpose of nominating one churchwarden. *Stra.* 1. 46.

If

If the parishioners should neglect to elect churchwardens, the ordinary has power to appoint them. *Stra.* 52.

The court of king's bench will not grant a mandamus for holding a vestry to churchwardens. *Stra.* 686.

When churchwardens are elected by virtue of any particular custom, the archdeacon is to swear them, though the election be against the canon; and if he refuses, a mandamus lies to compel him. 2 *Cro.* 551. Sworn in their office.

The office of a churchwarden continues 'till new ones are sworn; and if they refuse to take the oath, as by law directed, being duly elected, they may be excommunicated. Until the churchwardens, are sworn, they can do no legal act as churchwardens, nor have they any authority, but whatever they do is of their own wrong. *Can.* 89. On refusing to take the oath.

A counsellor or attorney ought not to be chosen churchwarden; and if he is chosen, he may have a prohibition, on account of his attendance on the courts at *Westminster.* 2 *Roll's Abr.* 272.

And apothecaries, who have duly served seven years, shall be exempted from the office of churchwarden. 6 *W. c.* 4. And freemen of the corporation of surgeons in *London* are exempted from being churchwardens. 18 *G.* 2. *c.* 15. Apothecaries and surgeons.

All dissenting teachers or preachers, in holy orders, or pretended holy orders, being duly qualified, are exempted from the office of churchwarden. 1 *W. Sess.* 1. *c.* 18. Dissenting ministers.

All

All teachers of diſſenting congregations, regiſtered ſeamen, though not in actual ſervice, &c. are exempted from ſerving the office of churchwarden, by divers ſtatues. If any diſſenter be choſen churchwarden, he may execute the office by ſufficient deputy. 2 *Roll. Abr.* 272.

Perſons having convicted a felon.

Any perſon who has proſecuted a felon to conviction, is exempted from the office of churchwarden, in the pariſh where the offence was committed. 10 & 11 *W. c.* 23. *ſ.* 2.

Serving in the militia.

No private man, ſerving for himſelf in the militia, during the time of ſuch ſervice, ſhall be liable to ſerve as churchwarden. 2 *G.* 3. *c.* 20.

Refuſing to take the office.

Any perſon elected churchwarden, refuſing to take his office and oath, may be excommunicated; and no prohibition will lie. *Giles* 243.

Churchwardens a body corporate.

Churchwardens being thus ſworn, are ſo far incorporated by law, as to ſue for the goods of the church, and to bring an action of treſpaſs for them; and alſo to purchaſe goods for the uſe of the pariſh; but they are not a corporation in ſuch ſort as to purchaſe lands or take by grant, except in *London* by cuſtom. *Giles.* 241.

See that perſons come to church.

Churchwardens are to ſee that the pariſhioners come to church every *Sunday*, and to preſent the names of ſuch as abſent themſelves to the ordinary; or levy 1 *s.* for every offence. *Stat.* 1 *Eliz. cap.*

Not to talk idly at church, &c.

Churchwardens are not to permit any perſons to ſtand idle, walk or talk in the church

or church-yard; they are to take care that no persons sit in the church with their hats on, or in any other irreverent or indecent manner, but that they behave themselves orderly, soberly, and reverently, kneeling at the prayers, and standing at the belief, *&c.* They are to see that none contend about places, and they may chastise disorderly boys, *&c.* *Can.* 18. and 111.

They shall not suffer any man to preach within their churches or chapels, without producing his licence; and they are to take care that all persons excommunicated be kept out of the church; *Can.* 50, 85. and to see that peace be duly kept in the church.

To see ministers be licensed.

Any person quarrelling, either in the church or church-yard, the ordinary may suspend him from entering the church, *&c.* If any one is assaulted and beaten in the church, it is not lawful to return blows in his own defence; for striking another there, the offender shall be excommunicated. 5 *&* 6. *Ed.* 6. *c.* 4. *Cro. Jac.* 462, 366. *Noy* 104.

Quarreling in the church punished.

The churchwardens are to apprehend those who interrupt or disturb the minister, and bring them before a justice, *&c.* And any person disturbing the minister, is by *stat.* 2 *&* 3 *Ed.* 6. liable to a penalty of 10 *l.* and three months imprisonment; and for the second offence he shall forfeit 20 *l.* or suffer six months imprisonment; and for the third offence, he shall forfeit all his goods and chattels, and be imprisoned during life. And by *W. & M.* to disturb a congregation, misuse a teacher, *&c.* incurs a forfeiture of 20 *l.*

To apprehend disturbers of the congregation.

Search alehouses on Sunday.

They shall see that the Lord's day be duly observed; they shall search alehouses on *Sundays*; and if any persons are found therein during divine service, they shall make them pay 3*s.* 4*d.* and also 1*s.* for being absent from church; and the master of such alehouse shall forfeit 10*s.* *&c. stat.* 1. *Jac. c.* 9.

Profaners of the Lord's day.

The churchwardens shall execute warrants against those who profane the Lord's day; and levy the forfeiture of 1*s.* *&c.* on those who curse and swear, by warrant from a justice, *&c.*

To keep the keys of the belfry.

They are to keep the keys of the belfry, and see that the bells be not rung without good cause, to be allowed of by the minister and themselves. *Can.* 88.

Make presentment of things belonging to the church.

Churchwardens are to make presentment upon oath, (usually twice a year) but especially at the visitation of the bishop, of the several articles following, *viz.* whether there is a box for alms in the church; whether the bells and bell ropes are in repair; whether there be a bible, common prayer book, and book of canons; a desk for the reader, cushion for the pulpit, and a surplice; a communion table, table cloth, cups, and covers for bread, flaggons and font; a carpet, a register book, and chest with three locks; whether the King's arms are set up, grave stones and monuments well kept; the Lord's prayer, creed and commandments in fair letters; whether the church yard is well fenced, church and chancel and parsonage house in repair *&c.*

All

Concerning the parson.

Alſo whether the miniſter reads the thirty-ne articles twice a year, and the canons ce a year, preaches good doctrine every nday, reads the common prayer, celebrates e ſacrament, reads the homilies, whether he ſerves the 30th of *January*, the 29th of *Ay*, and the 5th of *November*; whether he eaches in his gown, wears a ſurplice, viſits e ſick, buries the dead, catechiſes children, ptizes, marries according to law, and lives ſober and godly life.

Things concerning the parishioners.

Whether any of the pariſhioners are ulterers, fornicators, drunkards, ſwearers, unters of alehouſes, *&c.* in time of divine rvice, whether they work on *Sundays*, or not repair to church, whether alms-houſes ſchools are abuſed, or legacies given to ous uſes, if baptiſm be neglected, of wo-en not coming to be churched, of marrying prohibited degrees, (of which there is be a table) of marrying without banns, ence, or at unlawful hours; if ſacraments received three times a year of all above teen; if pariſhioners are placed in ſeats thout contention, *&c.* and if they refuſe make preſentment, the parſon may pre-nt.

Perſons convicted of ſolemnizing matrimony to be tranſported.

By the 26 *Geo.* 2. *c.* 33. it is enacted, hat if any perſon ſhall, after the 25th of *arch*, 1754, ſolemnize matrimony in any her place than a church or public chapel, ere banns have been uſually publiſhed, un-s by ſpecial licence from the archbiſhop of *nterbury*; or ſhall ſolemnize matrimony thout publication of banns, unleſs licence

of marriage be first obtained from some per having authority to grant such licence; eve person wilfully offending, and being convic thereof, shall be adjudged guilty of felon and be transported for fourteen years. And marriages solemnized after the 25th of *Mar* 1754, in any other place than a church, publick chapel as aforesaid, or that shall be lemnized without publication of banns, licence of marriage from a person having a thority to grant the same, shall be null a void.

and marriage void.

To provide books for entering marriages and banns.

By the 26 *Geo.* 2. *c.* 3. the churchwarde and chapelwardens of every parish or chape ry shall provide proper books of vellum, durable paper, wherein all marriages a banns of marriage there published or solem nized, shall be registered, and every pa thereof shall be marked at the top, with t figure of the number of every such page, b ginning at the second leaf with number on and every leaf or page so numbered, shall ruled with lines at proper and equal distanc from each other; and all banns and marriag published or celebrated in any church or chap or within any such parish or chapelry, sh be respectively entered, registered, printed written upon, or as near as conveniently m be to such ruled lines, and shall be signed the minister or curate, or by some other pe son in his presence, and by his directio and such entries shall be made as aforesa on or near such lines in successive orde where the paper is not damaged or decay by accident or length of time, until a n

book ſhall be thought proper or neceſſary to be provided for the ſame purpoſes, and then the directions aforeſaid ſhall be obſerved in ſuch new book; and all books provided as aforeſaid, ſhall be deemed to belong to every ſuch pariſh or chapelry reſpectively, and ſhall be carefully preſerved for public uſe.

Seats, perſons placed in.

The churchwardens of the pariſh, with the conſent or approbation of the miniſter, have the placing of the pariſhioners in the ſeats of the body of the church, the appointing pew keepers, *&c.* reſerving to the ordinary, a power to correct the ſame: and in *London* the churchwardens have this authority in themſelves by cuſtom.

Churchwardens repair and diſpoſe of ſeats.

If it be a cuſtom in a pariſh, that the churchwardens there are to repair the old ſeats, and erect new ones, and appoint who are to ſit on them; and they in conſequence erect a new ſeat in the body of the church, and appoint a certain perſon to ſit there; and afterwards the ordinary ſhall decree that another perſon ſhall have the ſeat: In this caſe a prohibition lies againſt him, for the cuſtom hath fixed the power of diſpoſing of the ſeats in the churchwardens. *Roll. Abr.* 221.

Body of the church.

The church and church-yard are by the common law the freehold of the parſon; but the uſe of the body of the church, and the repairs thereof, common to all the pariſhioners.

Repairs give the title to family ſeats.

A perſon may have a ſeat in a church, appendant to his houſe or eſtate, and preſcribe that he and his anceſtors, or thoſe whoſe eſtate he now hath, uſually ſat there, and re-

paired the ſeat; but he cannot preſcribe to a ſeat in the body of the church generally, without ſhewing that he, and all thoſe he claims from, have time out of mind repaired it. For the body of the church and the repair of it is common to all the pariſhioners; and to avoid confuſion, the diſtribution and diſpoſing of ſeats, and the charges of repairing, belong to the ordinary. *Heb.* 69. 2 *Roll. Abr.* 288.

If a perſon and his anceſtors have time out of mind repaired the iſle, and ſat and buried there, it makes it proper to him and his family; ſitting there only, does not; but the ordinary may appoint who ſhall ſit there. *Noy* 104. *Cro. Jac.* 366.

Erecting pews, hanging up bells, &c.

If any perſon ſhall erect a pew in a church or hang up a bell in a ſteeple, they become thereby church goods (though they are not expreſsly given to the church) and he ſhall not afterwards remove them. *Stat.* 10 *H.* 4.

Who ſhall repair.

Of common right, as before obſerved, the ſoil and freehold of the church is the parſon's; the uſe of the body of the church and the repair of it, common to all the pariſhioners; and the diſpoſing of the ſeats herein, the right of the ordinary. *Gibs.* 221.

Of compelling the repairs to be made.

The ſpiritual court hath power to compel the pariſhioners of a pariſh to repair the body of the church, and may excommunicate them all till it be repaired; but thoſe who are willing to contribute ſhall be abſolved, till the greater part agree to a tax. *Read Ch. Service.*

If the churchwarden of a parish erect or add ny thing new, either to the fabrick of the hurch, the utensils, or the church-yard, it ust be with the consent of the parishioners; nd if such additions are to be made in the hurch, the bishop's licence is likewise neessary. But where necessary repairs are anting the majority of the parish will bind he others; and if the greater part will not onsent, where repairs are absolutely necessary, he churchwardens may repair without their onsent, if upon notice given them they reuse to meet, or when met, refuse to make a ate. But if a church fall down, the paishioners are not bound to rebuild it. *Read. Ch. Service.* 1 *Vent.* 367.

Difference between adding new, and repairing the old.

If a church is so greatly out of repair, that t ought to be pulled down, or so little, that t is necessary to enlarge it, the majority of he parishioners may make a rate for a new uilding, or enlarging, as there shall be ocasion. *Gibs.* 221.

Majority may rebuild a church.

The rector, as also the lay impropriator, re bound by common right to repair the hancel, and is thereupon intitled to the chief eat therein, unless another person hath it by rescription; yet he hath not the disposal of he seats therein, but the bishop. *Gibs.* 223, 224.

On repairing the chancel.

The churchwardens are to keep in repair he gates, stiles and doors leading into the hurch yard, and the ways therein; and the hurch ways must not only be broad enough or the passage of single persons, but also for he carrying of a corpse to be buried, as often

Church-yards, gates, ways, &c. how repaired.

as there ſhall be occaſion; and the ſtiles ſhall be ſo made or conſtructed, that perſons of all ages may be able to go over them: but if any perſon hath a private door to the church, or a way through the church-yard (which cannot be made without the conſent of the miniſter, and a faculty from the biſhop) they ſhall be repaired by him who hath the uſe of them. Inhabitants may preſcribe to have a way through a church-yard, they and their anceſtors having always had and repaired the ſame. 2 *Roll. Abr.* 265.

Particular repairs.

The church reparations extend to church-yard walls, the walls of the church and ſteeple, the floor, the pulpit, and the pews, windows, iron bars, and glaſs; the roof of timber, with laths, nails, *&c.* the covering of lead, tiles, *&c.* the doors with locks and keys; ſtairs, bells, wheels and ropes in the ſteeple. *Can.* 85.

Church ornaments.

Pariſhioners are chargeable for the repairs of the ornaments of the church; and the following are accounted church ornaments, *viz.* the communion table and coverings, the communion cups, bible and other books appointed to be kept in churches, the ſurplice, pulpit cloth, and cuſhion.

Sexton's wages, &c.

The expence attending all theſe, as well as the ſexton's wages, waſhing the communion clothes, candles and money diſburſed by the churchwardens, are to be raiſed by a rate or tax.

Of ſummoning a veſtry.

Rates are to be made with the conſent of the majority of the pariſhioners, houſekeepers, or occupiers of land: therefore public notice of

f a vestry (a place so called from the vest-
nent of the minister being kept there) ought
o be given the *Sunday* before, either in the
hurch after divine service, or at the church
oor as the parishioners come out; both of
he calling such meeting, and of the time and
lace of assembling: and it will be fair and
andid then also to declare on what business
uch meeting is to be held, that all persons
nay have full time to consider what is to be
roposed at the said meeting; and for half an
our before it begins, it is usual for one of the
hurch bells to be tolled, to remind the pa-
ishioners when they are to meet. 5 *Co.* 67.
Par. L. 54.

Every parishioner who paid to the church ates, and no other, had at the common law right to vote. *Par. L.* 56. And those who o not pay church rates, shall have no vote in natters relating to it, except the rector or vi-ar. *Wood, b.* 1. *c.* 7. Who have a vote in the vestry.

Every person who has a vote in the ves-y hath an equal right, and neither the mi-ister nor churchwardens, without a special ustom, can adjourn the vestry, but only a najority of the whole assembly. *Str.* 1047. Who may adjourn the vestry.

The churchwardens and parishioners being net at the vestry, they are then to consider what sum it will be necessary to raise to make uch repairs as shall then be needful; and af-er they have agreed what sum of money is roper, they are to make an equal levy or ate. *Degge*, 171. Of laying the rate.

The majority of them that appear shall ind the parish, or if none shall appear, the Majority bind the parish.

churchwardens themſelves may make the rate; becauſe they, and not the pariſhioners, are to be cited and puniſhed in defect of repairs. *Gibſ.* 220.

Entering in a book.

It is proper and convenient, that every pariſh act be entered in the pariſh book of accounts, and every man's hand conſenting to it be ſet thereto, as it will then be a certain rule for the churchwardens to act by. *Par. L.* 55.

Select veſtry.

By cuſtom ſelect veſtries may be allowed, of a certain number elected yearly, to make rates, and manage the affairs of the pariſh for that year; and ſuch cuſtom is good. *Read. Ch. Service. Gibſ.* 246. *Str.* 428.

One rate for the fabrick, another for ornaments.

It is held, that a rate for the reparation of a fabrick of a church is real, charging the land; but a rate for ornaments of a church is perſonal, upon the goods, and not upon the land. *Gibſ.* 220.

And in *Jeffrey*'s caſe, 5 *Co.* 67. it was adjudged, that the rates for the repair of the church ſhall be laid upon every occupier of lands in the pariſh, although he may live in another pariſh; and ſuch perſon may come to the veſtries of the pariſhioners, and vote in the making a rate; but he ſhall not be charged towards the ornaments of the church, as for bells, repair of ſeats, bread and wine, clerk's wages, viſitation charges, and the like, by reaſon of ſuch lands; the perſonal eſtates of the inhabitants being chargeable with every thing not relating to the fabrick of the church, or the repairs of the fences of the church-yard, or ſuch other things as concern the

the freehold: therefore ſome have been of opinion, that churchwardens ſhould make two rates, one upon lands and houſes, which may concern the freehold of the church, and another upon perſonal eſtates and ſtock, to defray other expences; but as this method would create confuſion, it is ſeldom practiſed. And *Degge* ſays, he conceives the law to be clear otherwiſe, and that a foreigner who holds lands in the pariſh, is as much obliged to pay towards the bells, ſeats, and ornaments, as to the repair of the church: otherwiſe there would be very great confuſion in making ſeveral levies, which he never obſerved to be practiſed within his knowledge; but he leaves it a query, among a variety of opinions. *p.* 173.

Equal pound rate.

It is agreed that a taxation by the pound rate is the moſt equitable way, and not according to the quantity of the land. *Wood*, *b.* 1. *c.* 7.

Where lands are in farm, the tenant, not the leſſor, ſhall be rated and pay. *Gibſ.* 221.

Impropriator, how chargeable.

An impropriator, though bound to repair the chancel muſt alſo contribute to the reparations of the church, if he hath lands in the pariſh, which are not part of the parſonage. *Gibſ.* 221, 223.

Appeal againſt the rates.

Any perſon finding himſelf aggrieved at the inequality or partiality of the aſſeſſment, may appeal to the eccleſiaſtical judge. *Degge*, 172.

In ſuch caſe, in order to be relieved, he muſt ſhew, that he is unequally taxed, as being rated for more land than he hath, or that

his land is over-rated, or that the rate was unnecessary, or that some lands in the parish are omitted in the rate. *Wood, b.* 1. *c.* 7.

Rate, how recovered.

Any person refusing to pay the rates, being demanded by the churchwardens, they are to be sued for in the ecclesiastical courts, and not elsewhere. *Gibs.* 219. *Degge*, 171.

Quakers refusing to pay church rates, may be sued in the same manner as other parishioners, in the ecclesiastical court; or they may be prosecuted before the justices, in the same manner as for their tithes.

Poor children bound apprentice provided for.

Poor children being appointed to be bound apprentice, pursuant to 43 *Eliz. cap.* 2. the person to whom they are to be bound, shall receive and provide for them according to the indenture, signed and confirmed by two justices, and also execute the other part of the indentures; and upon refusal, oath being thereof made by one of the churchwardens or overseers, before any two justices of the peace for that county, *&c.* he shall forfeit ten pounds, to be levied by distress and sale, by warrant of the said justices, to be applied to the use of the poor of the parish, saving to the person to whom any poor child shall be appointed to be bound, his appeal to the next quarter-sessions, whose order shall be final.

Churchwardens may seize the goods, &c. of husbands and parents, who leave their wives and children upon the parish.

By the *stat.* 5 *Geo.* 1. *cap.* 8. *sect.* 1. it shall and may be lawful for the churchwardens, or overseers, where any wife or children shall be left by their husbands, or parents, on the charge of such parish, by warrant from any two justices of the peace, to seize so much of the goods, and receive so much of the an-

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ual rents and profits of the lands of ſuch uſband or parent, as ſuch juſtices of the eace ſhall direct, for the diſcharges of the ariſh for the providing for ſuch wife or chil-ren; which order being confirmed at the next uarter-ſeſſions, the juſtices may make an or-er to diſpoſe of ſuch goods, and to receive he rents and profits, *&c.* for the purpoſes foreſaid.

The churchwardens and overſeers of the ariſh ſhall be accountable to the quarter-ſeſ-ions for what monies they ſhall receive by irtue of this act. *ſect.* 2.

Churchwardens and overſeers, with the onſent of the pariſhioners, or inhabitants in eſtry, may purchaſe or hire houſes in, and ontract with the perſons for the lodging, aintaining and employing ſuch poor in their ariſhes, *&c.* as ſhall deſire relief; and if any oor perſon ſhall refuſe to be lodged in ſuch ouſe, he ſhall be ſtruck out of the books, nd not be intitled to relief; and two or nore ſuch pariſhes, *&c.* with like conſent, vith the approbation of a juſtice of peace, welling in or near ſuch pariſh, *&c.* may nite in purchaſing or hiring ſuch houſe; and he churchwardens and overſeers of any pa-iſh, *&c.* with like conſent, may contract vith the churchwardens and overſeers of any ther pariſh, for the lodging, maintaining, r employing of any poor perſon, provided hat no perſon, or his apprentice or children, hall require a ſettlement in the pariſh to vhich they are removed by virtue of this act. *ſect.* 4.

Churchwardens may purchaſe houſes to employ the poor in.

oors rates ublished in he church.

By the *stat.* 17 *Geo.* 2. *cap.* 3. *sect.* 1. it is enacted, That whereas great inconveniencies frequently arise in cities, towns corporate, parishes, and places, on account of the unlimited power of the churchwardens and overseers of the poor, who often on frivolous pretences, and to answer private ends, make unjust rates, in a secret and clandestine manner, contrary to the true intent and meaning of 43 *Eliz.* for preventing the like abuses for the future, be it enacted, That after the first day of *May*, 1744, the churchwardens and overseers, *&c.* shall give, or cause to be given, public notice in the church, of every rate for the relief of the poor, allowed by the justices of peace, the next *Sunday* after it shall have been so allowed; and no rate shall be esteemed valid and sufficient, unless such notice shall have been given.

The rates to be inspected, and copies taken.

It is further enacted, That the churchwardens and overseers in every parish, township or place, shall permit all the inhabitants of the said parish, township, or place, to inspect every such rate at all reasonable times, paying 1 *s.* for the same; and shall, upon demand forthwith give copies of the same, or any part thereof, to any inhabitant of the said parish, township, or place, paying at the rate of sixpence for every twenty-four names. *sect.* 2.

Penalty on not permitting to inspect, &c.

If any churchwarden, overseer of the poor, *&c.* shall not permit any parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such churchwarden, overseer, *&c.* for every such offence, shall forfeit to the party aggrieved the sum of 20 *l.* to be sued for by action of

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debt, bill, plaint, or information, in any of his majesty's courts of record, wherein no essoin, protection, or wager of law, or more than one imparlance shall be allowed. *sect.* 3.

By the *stat.* 17 *Geo.* 2. *cap.* 38. *sect.* 1. it is enacted, That after the 24th day of *June*, 1744, the churchwarden and overseers of the poor shall yearly, within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers a just, true and perfect account in writing, fairly entered in a book, or books, to be kept for that purpose, and signed by the said churchwardens and overseers, hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated, and assessed, and not received, and also of all goods, chattels, stock and materials that shall be in their hands, or in the hands of any of the poor in order to be wrought, and of all monies paid by the churchwardens and overseers so accounting, of all other things concerning their said office; and shall also pay and deliver over all sums of money, goods, chattels, and other things as shall be in their hands, unto such succeding overseers of the poor; which said account shall be verified by oath, or by the affirmation of persons called quakers, before one or more of his majesty's justices of the peace; such oath or affirmation such justices are hereby authorised and required to administer, and to sign and attest the caption of the same, at the foot of the said account, without fee or reward; and such book or

books

books ſhall be carefully reſerved by the churchwardens and overſeers, or one of them, in ſome public place in every pariſh, townſhip, or place; and they ſhall permit any perſon there aſſeſſed, or liable to be aſſeſſed, to inſpect the ſame at all reaſonable times, paying ſixpence for ſuch inſpection, and ſhall upon demand forthwith give copies of the ſame, or any part thereof, to ſuch perſon, paying at the rate of ſixpence for every three hundred words, and ſo in proportion for any greater or leſs number.

Penalty on pariſh officers not accounting.

And in caſe ſuch churchwardens and overſeers of the poor, or any of them, ſhall refuſe or neglect to make and yield up ſuch account verified as aforeſaid, within the time herein before limited, or ſhall refuſe and neglect to pay and deliver over ſuch ſum or ſums of money, goods, chattels, and other things in their hands, as by this act is directed, it ſhall and may be lawful to and for any two or more juſtices of the peace, to commit him or them to the common gaol, until he or they ſhall have given ſuch account, or ſhall have paid or yielded up ſuch monies, goods, chattels, and other things in their hands.

To the churchwardens of the pariſh of ——.

Warrant to diſtrain for a church rate.

Midd. ſſ. WHEREAS complaint hath been made unto us, by *A. B.* and *C. D.* of, *&c.* churchwardans of the ſaid pariſh, that *E. F. G. H. &c.* have refuſed to pay the ſums of money by legal aſſeſſment

ment rated on them, for and towards the reparation of the parish church of, &c. aforesaid, *viz.* the said *E. F.* the sum of, &c. and the said *G. H.* &c. These are therefore in his majesty's name to command you, that you, or any of you, do levy the said several and respective sums of, &c. by distress and sale of the goods of the said *E. F.* and *G. H.* respectively, rendering to them the overplus, if any be, after the said several sums, and the charges of the distress deducted: and in case there be no goods, whereof a sufficient distress may be taken, that then you do certify the same to us that such further proceedings may be had as to justice appertains. Given, &c.

When the churchwarden's year is expired, he cannot as churchwarden commence a suit, so as to compel payment of rates, for repairs of the church, or the like: but if he commence the suit within his year, he may proceed in it after the year is out; it being *ex necessitate* to prevent people from delays, in order to wear out the year. 2 *Strange*, 852. Churchwardens suing for rate.

A person residing in one parish, and holding lands in another, may be taxed towards the new casting of the bells of the parish where his lands are; for they being necessary to the people, they are more than ornaments. New casting of bells, for taxes.

Persons of a chapelry, having always christened and buried within themselves, may prescribe to be exempt from repairing the mother church: but if there is a chapel of ease where they hear divine service, and they bury at another church, they must contribute to the repairs Chapelry, repairs of.

repairs of that church, notwithstanding they repair the chapel.

Repairs of new churches.

A new built church cannot be esteemed as a church in law, till after consecration; which being done, the parishioners are to repair it: but neither the ordinary nor churchwardens have power to give leave to bury there, but the parson only, the freehold of the soil being in him. 1 *Cro. Eliz.* 367.

Sacraments and burial make a church.

If any question should arise whether it is a church or chapel belonging to the mother church, on proof being made that sacraments have been administred, and the dead buried there, it is by the law accounted a distinct church.

Right of burial.

Notwithstanding the freehold of the church and church-yard lie in the parson, yet he cannot hinder a parishioner from having a place in the body of the church, nor from being buried in the church-yard; but for burying in the church, it is otherwise. *Cro. Jac.* 366.

Fees for breaking up ground.

The fee on breaking the soil at burials, belongs to those upon whom the burden is of repairing the pavement; that is, to the parson for the chancel, and the churchwardens for the body of the church. 3 *Keb. Rep.* 504. *Ventr.* 274.

Of robbing a corpse in the grave.

A person may be indicted at sessions for digging up the graves of persons buried, and taking their burial dresses, *&c.* afterwards interring their bodies again. And by *Co. Lit.* 113. it was resolved in this case, that the property of the winding sheets remained in the person who was the owner of them

when

when used; and an offender was found guilty of felony, but had his clergy. *Hains's* case.

The churchwardens may maintain an action for defacing a tomb or monument in the church. *Godb.* 279. And so may an heir by descent have an action against any person who beats down or defaces coats of arms, *&c.* of his ancestors in the church or church-yard. *Cro. Jac.* 367.

Churchwardens power in respect to defacing tombs, &c.

But it is otherwise, if any thing belonging to the freehold be broken or cut down, as the walls, windows, doors, or trees in the churchyard, *&c.* the parson or vicar, and not the churchwardens, shall then have an action. *Stat.* 8 *H.* 6.

Freehold in the parson.

The soil and feed of the church-yard are the minister's, and the trees growing therein; but he may not cut them down, unless for repairs of the chancel, *&c.* though he may lop them. 35 *Ed.* 1.

In *London*, by special custom, the churchwardens with the minister, make a corporation for lands as well as for goods; and may take such hold, purchase, and take lands for the use of the church, and sue and be sued on account thereof. And there is another custom in the city of *London*, for the parishioners to chuse both churchwardens, exclusive of the minister; who is also there excused from repairing the chancel of the church. *Cro. Jac.* 525. *Co. Inst.* 3. *Roll. Abr.* 339.

By custom in London they may take lands.

The churchwardens of every parish, within the bills of mortality, at the charge of their respective

To fix fire-cocks, &c.

respective parishes, shall fix upon the pipes belonging to the water-works, stop blocks and fire-cocks; and make a mark on the front of any house over against them to find them, where an instrument is to be kept to open the plug where any fire happens. *Stat.* 6 *Ann. c.* 31.

To keep engines, &c. in repair.

And there shall be kept in each parish a large engine, and a hand engine, and a leather pipe and socket of the same size as the plug or fire-cock, under the penalty of 10*l.* to be levied by warrant of two justices, by distress and sale of the goods of the churchwardens; half to go to the informer, and the other half to the poor. *Ibid.*

Reward for bringing engines, &c.

When any fire shall happen, the first person who brings in a parish engine, or any other large engine with a socket, *&c.* shall be paid as an encouragement 30*s.* the person who brings in the second parish engine, shall be paid 20*s.* the third 10*s.* and the turn-cock, whose water shall first come into the main-pipe, shall be paid 10*s.* by the churchwardens, or the same shall be levied by distress, *&c. stat.* 7. *Ann. c.* 17.

Assess the monies, &c.

Churchwardens and overseers may make rates and assessments for money for the maintenance and repairs of engines, stop-blocks, *&c.* as they do for maintenance of the poor, *&c.*

Money, &c. to be delivered up.

When the receipts of churchwardens fall short of their disbursements, the succeeding churchwardens ought to pay them the balance, and place it to their account, by the canon, 88.

When

When the churchwardens paſs their ac-
unt of all money received and expended
ring their office, they muſt alſo give an ac-
unt of the church goods committed to their
arge, which ſhall be then brought forth,
lied over, examined, and delivered over to
e ſucceſſors, together with keys of the pa-
h cheſt, *&c.*

In caſe any diſpute ſhall ariſe about the ac-
unt, it ſhall be decided before the ordinary;
d for diſburſement of any ſum not exceed-
g 40 *s.* the churchwardens oath alone is a
fficient proof; but for any ſum above 40 *s.*
ceipts muſt be produced, *&c.* No allowance
account can diſcharge churchwardens of
y fraudulent dealings, which they may have
en guilty of in their office; but when ever
y ſuch are detected, they are accountable.
nd though all the pariſh have allowed ac-
unts of the church goods, the ordinary may
ll them to account before him too, and pu-
ſh them if he find cauſe; but in laying out
oney, they are puniſhable for fraud only,
t indiſcretion. 2 *Roll. Abr.* 120.

Diſputes in accounts decided.

The ordinary is not to take the account of
e churchwardens, but only to give judg-
ent that they do account; and if the
urchwardens being cited into the ſpiritual
urt to account, plead that they have ac-
unted at the veſtry according to law, and
e ordinary rejects the plea, and proceeds
twithſtanding the plea, the court of king's
nch will grant a prohibition. 2 *Stra.* 974.
dr. 11.

Power of the ordinary to compel churchwardens to account.

During

Churchwardens power in a vacancy of the benefice.

During the vacancy of a benefice, churchwardens have the care of it, and as soon as there shall be any avoidance, they should apply to the chancellor of the diocese for a sequestration; and having taken out an instrument for it, they are to manage all the profits and expences of the benefice for him that shall succeed: They are to plough and sow his glebes, take in the crop, gather in tithes, thrash out and sell corn, repair houses, fences, &c. but not commit waste upon the living, in cutting timber, &c. They are also to take care, that during the vacancy, the church be duly served by a curate approved by the bishops, and they are to pay him out of the profits of the benefice. 2 *Inst.* 89.

Doing waste, &c. may be changed.

If the churchwardens waste the church goods in their custody, or much damnify the parish, they may on proof thereof be removed at any time, by the authority of the ordinary. 13 *Co.* 70.

To join with constables, overseers, &c.

Churchwardens are to join with the overseers and constables in making rates for the relief of poor prisoners, maimed soldiers, &c. and in chusing surveyors of the highways, appointing days to work, &c. and are to join with the overseers of the poor in the execution of their whole office.

An overseer.

Every churchwarden is in fact an overseer of the poor, although every overseer of the poor is not a churchwarden. 43 *El. c.* 2. *s.* 1. And in *M.* 15. *c.* 2. A churchwarden was committed by the two next justices of the peace, as churchwarden, for refusing to account for money received and disbursed by him

m; but on an *habeas corpus* he was discharg-
d: for by the warrant of commitment it
ught to appear, he was overseer of the poor,
r by the statute of 43 *El.* the office of over-
er is annexed to his office of churchwarden,
nd the justices of the peace have no juris-
ction over him as churchwarden, but as
verseer. *Dalt.* 186.

The churchwardens (or the constable) shall
vy the penalties for persons exercising
eir worldly calling on the Lord's day. 29
. 2. *c.* 7.

Working on the Lord's day.

Churchwardens shall suffer no plays, feasts,
nquets, suppers, church ales, drinkings,
mporal courts, or leets, lay juries, musters,
any prophane usage, to be kept in the
urch or church-yard. *Can.* 88.

Profanation of the church.

The churchwardens shall take care that the
rishioners resort to church, and continue
ere orderly, during the time of divine ser-
ce; and shall present defaulters. *Can.* 90.

Attending divine service.

They shall not suffer idle persons to con-
nue in the church-yard, or church-porch,
uring divine service or preaching; but cause
em to come in, or to depart. *Can.* 90.

Loitering in the church-yard.

Churchwardens shall levy the forfeiture of
s. a Sunday, on the goods of persons who
not come to church. 1 *El.* 2.

1 *s.* a Sunday not coming to church.

The churchwardens, constables or over-
ers, shall levy the penalty of 3 *s.* 4 *d.* for
ing unlawful pastimes on the Lord's day.
C. c. 1.

Sports on the Lord's day.

The churchwardens, constables, or over-
ers, shall levy the penalties for attending at
lawful conventicles. 22 *C.* 3. *c.* 1.

Conventicles

The

Recusants.

The churchwardens shall on pain of the forfeiture of 20 *l.* present at the sessions once a year, the monthly absence from church of all recusants, also the names and ages of the children who are above nine years old, and the names of their servants. And if the parties presented shall be convicted, the churchwardens shall be entitled to a reward of 40 *s.* to be levied on the recusants goods, by warrant of the justices in sessions. 3 *J. c.* 4.

To excommunicate persons.

They shall not suffer excommunicated persons to come to church. *Can.* 85.

Ornaments of the church.

It is the duty of churchwardens to take care to have in the church, a large bible, a book of common prayer, a book of homilies, a font of stone, a decent communion table, with proper coverings, the ten commandments at the east end of the church, and other choice sentences upon the walls, a reading desk, a pulpit, and chest or box for alms; at the expence of the parish. *Can.* 80. 1, 2, 3, 4.

Register.

The churchwardens are to take care to have a box wherein to keep a register, with three locks and three keys, two keys to be kept by them, and the other by the minister; and every Sunday they are to see that the minister enter therein all christenings, weddings, and burials that have happened the week before; and at the bottom of every page, they shall subscribe their names with that of the minister. And they shall, within a month after *March* 25, yearly transmit to the bishop a copy thereof for the year before subscribed by themselves and the minister.

The

They ſhall, with the advice and direction the miniſter, and at the expence of the riſh, provide bread and wine for the communion. Communion.

The churchwardens or overſeers, ſhall levy e penalty of 5 *l.* for an incumbent not ading the communion once a month. 13 & *C.* 2. *c.* 4. Incumbent.

Churchwardens ſhall collect money on iefs, on pain of 20 *l.* 4 *Inſt. c.* 14. Charity briefs.

On certificate from the miniſter, they ſhall ply to the magiſtrates for conviction of ofnders in not burying in woollen. 30 *C.* *c.* 3. Of burying in woollen.

Thoſe perſons who murder themſelves, or excommunicated, are not permitted chriſn burial; and the churchwardens muſt not ffer them to be buried in the church or urch-yard, without ſpecial licence from the hop. *Degge* 183. Perſons denied chriſtian burial.

The churchwardens ſhall receive the pelties for drunkenneſs and tipling. 4 *G. c.* 21 *G. c* 7. Drunkenneſs.

The churchwardens or overſeers, ſhall levy penalty for ſelling corn by a wrong meare. 22 *C.* 2. *c.* 26. Corn.

The churchwardens or overſeers, ſhall levy penalties concerning weights and meaes. 16 *C. c.* 19. 22 *C.* 2. *c.* 8. Of weights and meaſures.

The churchwardens are to provide cheſts erein to lock up the arms, clothes and acutrements of the militia. 2 *G.* 3. *c.* 20. Militia.

The churchwardens and the miniſter, ſhall n certificates for the out-penſioners of *Greenh* hoſpital, reſiding within their pariſh, reſpecting Greenwich hoſpital.

ſpecting the identity of their perſons, th
they may receiv their penſions. 3 *G.* 3. *c.*

County rates.

The churchwardens or overſeers ſhall p
to the high conſtables the general county ra
out of the money collected for the poo
12 *G.* 2. *c.* 29.

Servants firing houſes.

The churchwardens ſhall receive the p
nalty for ſervants careleſly or negligently f
ing houſes. 6 *An.* *c.* 31.

Surveyors of highways

The churchwardens ſhall join with t
conſtable and the ſurveyor of the highways
chuſing and returning new ſurveyors of t
highways. 7 *G.* 3 *c.* 42.

Briefs to be indorſed, &c.

By the ſtatute 4 *Ann.* *c.* 14. it is enacte
that when briefs are delivered to the warde
of churches and chapels, &c. they are i
mediately after receipt, to indorſe the time
receiving, with their names thereon, and d
liver them to the miniſters and curates, w
ſhall alſo indorſe the time of their receipt, a
their names in the ſame manner as the churc
wardens.

Briefs read, and money collected.

The miniſters within two months after r
ceipt of briefs, are immediately before preac
ing, openly to read ſuch briefs in their reſpect
places of meeting; and the churchwarde
ſhall collect the money that ſhall be giv
there, or go to collect from houſe to hou
&c.

Sums to be indorſed.

The ſums of money collected, and pl
and time, are to be indorſed in words at leng
and ſigned by the miniſter and churchw
dens, and by the teacher and two ſubſtan
perſons of ſeparate congregations: And t
briefs indorſed, and money collected ſhall

ered to the persons undertaking the briefs, r the penalty of 20*l.* And the under- s not demanding such briefs and money in such six months, are liable to the same lty.

all the briefs be not returned, the under- for every copy wanting shall forfeit 50*l.* ve sufficient proof in the court of chan- of the briefs being lost by inevitable ents, and of the money collected there- . A register is likewise to be kept of all es collected, inserting the occasion of riefs, and the time when collected; to n all persons may freely resort. And briefs returned.

e undertakers of briefs, in two months the receipts of the money, and notice ferers, are to account before a master in cery, to be appointed before the lord cellor. How money to be accounted for.

farming such charity money is unlaw- nd covenants and agreements concern- e same are void: and any person agree- purchase the benefit, or advantage of briefs, shall forfeit 500*l.* for the use and t of the sufferers. Briefs not to be farmed.

Constables.

HE names of high constables, or con- stables of lathes, rapes, wapentakes, eds, and franchises; and the sundry also of petty constables, tythingmen, lders, boroheads, headboroughs, chief Antiquity of constables.

pledges, and such other that bear office towns, parishes, hamlets, tithings, or roughs are all in effect but two, that is to *constables* and *borsholders*. *Lamb. Const.*

How chosen and appointed.

Constables are doubtless officers of great tiquity; for by the laws of King *Alfred*, freemen were to dispose themselves into cenniries and hundreds, and every ten f holders choose an annual officer, whom t called constable, borsholder, tithingm or headborough, as head of the decenn These in every hundred where there wa feudal lord, were sworn in, and admitted the lord or his steward in his leet: but wh there was no such feudal lord, the sheriff his turn had the swearing and placing of th in. Also, if there was no feudal lord of hundred, an annual officer was chosen, was to preside over the whole hundred, was called the high constable; but if hundred was feudal, as it often ancie was, then such lord of the hundred adm stered the office himself. 2 *Hawk. P. C.* 4 *Inst.* 267.

There are two sorts of constables, *viz.* c stables of hundreds and franchise, and c stables in towns and parishes within those h dred or franchises: and in comparison of one with the other, the first are called constables, and the latter petty constable

High constables.

Lambert, in his treatise of the Duty of C stables, *&c. fol.* 5. says, this office of constable was drawn from that of the constable of *England*, which was an offic great authority in deeds of arms and ma

war, both within and without the realm; the ſtatute of *Wincheſter*, anno 13 *E.* 1. 2. *c.* 6. by which theſe conſtables of hundreds and franchiſes were firſt ordained (tho', cording to others, the office of conſtable is far greater antiquity; *Freem.* 348. *Salk.* 0. *Cro. Eliz.* 376.) among other things apnts, that for the better keeping the peace, o conſtables in every hundred and franchiſe ll be choſen to make view of armour, and y ſhall preſent the defaults of armour, and ſuits of towns and of highways. From s Mr. *Lambert* concludes, that the conble of a hundred or franchiſe, or high conble, is an officer appointed to preſerve the ng's peace within the precinct of his hund or franchiſe.

From hence lord *Coke*, and others, are of opin, that high conſtables are not more ancient n this ſtatute: but Mr. *Hawkins* (agreeat to *Lambert*, *Dalton*, and other authorities) s, that it ſeems that both conſtables of ndreds, which are commonly called high nſtables, and alſo conſtables of tithings, ich are at this day commonly called petty nſtables, or tithingmen, were by the comn law, and not firſt ordained by the ſtatute *Wincheſter*; for that the ſtatute doth not , that there ſhall be ſuch officers conſtitu, but clearly ſeems to ſuppoſe that there re ſuch before the making of it. 2 *How.*

It hath been advanced, that a cuſtom in a vn, that the inhabitants ſhall ſerve the of- of conſtable by turns, according to the ſi- Women.

tuation of their ſeveral houſes, is not good for that by ſuch a courſe, it may come to a woman's turn to be a conſtable, as inhabitant of one of thoſe houſes; yet we find ſuch cu-toms allowed to be good in later books; and it ſeems, that the conſequence of the reason above-mentioned may well be denied, ſince a woman in ſuch caſe may procure another to ſerve for her. 2 *Haw.* 63.

Phyſicians. It alſo appears that a practiſing phyſician being choſen conſtable in purſuance of ſuch cuſtom, has no remedy for his diſcharge; ſince there are no precedents of this kind, and his calling is private. 2 *How.* 63.

By the ſtatute 13 & 14 *Car.* 2. *c.* 12. § 15. it is enacted, That in caſe any conſtable, headborough, or tithingman ſhall die, or go out of the pariſh, any two juſtices of the peace may make and ſwear a new conſtable, headborough, or tithingman, until the ſaid lord ſhall hold a court, or until next quarter-ſeſſions, who ſhall approve of the ſaid officers ſo made and ſworn as aforeſaid, or appoint others as they ſhall think proper: and if any officer ſhall continue above a year in his office, that then in ſuch caſe the juſtices of the peace in their quarter-ſeſſions may diſcharge ſuch officer, and may put another fit perſon in his place, until the lord of the manor ſhall hold a court as aforeſaid.

If any perſon who has been duly elected conſtable, ſhall refuſe to take upon himſelf the office, he may, if preſent, be fined by the court, and if abſent, on having a certain time and place appointed him for the taking of the

oath

h before a justice of the peace, he may af- notice of such appointment and present- ent, at the next court be amerced. *Cro. Car.* 7.

In either of these cases he may be indicted, her before justices of oyer and terminer, or the sessions of the peace; but such indict- ent ought specially to set forth the man- r of every such election, appointment, no- e and refusal, and before whom the court s holden. 2 *Haw. P. C.* 64.

Nor is an indictment for not finding a suffi- nt person to serve the office of constable, od, unless such indictment shew that the rty refused to serve it himself. 1 *Keb.* 416. *Haw. P. C.* 64.

It appears certain, that if a sworn attorney other officer of the courts at *Westminster*, chosen constable, he may have a writ of vilege for his discharge, on account of his cessary attendance in those courts: and it h been held, that such officer shall have s privilege, not only where there is no spe- l custom concerning the election of consta- es, but also where they are chosen by a par- ular custom, in respect of their estates, or herwise; because no such custom shall be tended to be more ancient than the usages those courts, and therefore shall give way them. 2 *Haw.* 63. Attornies.

Also it is taken for granted, that practising rristers at law, and the servants of mem- rs of parliament, have the same privilege; ough there appears to have been no resolu- ons to this purpose. 2 *Haw.* 63. Barristers. Servants to members of parliament.

Alderman of London.

Also if an alderman of *London* has an hou at *D.* in the county of *Essex*, and he, as a inhabitant there, is chosen constable, he not compellable to serve. For as an alde man he is bound, to be present in the city *London*, for the good government there *Cro. Car.* 585.

Captain of the guards.

But it seems agreed, that a captain of t King's guards, being presented to serve constable, in pursuance of a custom in respe of his lands in a town, cannot claim this pr vilege; because notwithst nding he is boun by his office to personal attendance on t King's person, yet such office being of la institution, shall not prevail against an ancie custom. 2 *Haw.* 63.

By the 5 *Hen.* 8. *cap.* 6. The wardens a fellowship of surgeons infranchised in *Lo don*, and all barber-surgeons admitted and ap proved according to the statute in that be half made, not exceeding the number twelve, shall be discharged constableshi watch, *&c.*

By *stat.* 32 *Hen.* 8. *c.* 40. The president the commonalty and fellowship of physic *London*, and commons and fellows of t same, shall not be chosen constables in t city of *London*, or suburbs thereof.

By *stat.* 6 *W. & M. c.* 4. All apothecari who have been brought up and served as a prentices in the said art for seven years, acco ding to the statute of 5 *Eliz.* shall be freed a exempted from the office of constable.

By *stat. W. & M. c.* 18. *s.* 11. It is enac ted, that every teacher or preacher in holy o

ders

ers, or pretended holy orders, in a congregation tolerated by law, shall after the time of his subscription, and taking the oaths, be exempted from the office of constable. And by *s.* 7 of the same statute, it is provided, that any person dissenting from the church of *England*, shall be chosen constable, and shall scruple to take upon him the office, in regard of the oaths, or any other matter required to be done in respect of such office, he may execute it by a sufficent deputy by him to be provided, to be allowed by such persons, and in such manner, as such officer should have been allowed.

By 10 & 11 *W.* c. 23. *s.* 2, 3. The person who prosecutes a felon to conviction, or the person to whom he shall assign the certificate thereof, shall be discharged from the office of constable. Prosecutors of felons.

The office of a constable being wholly ministerial, and no way judicial, it appears that he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself; yet it doth not seem to be settled, that a constable can make a deputy, without some special cause. 2 *Haw.* 62. Whether constables may appoint a deputy.

But the person that appoints such deputy must be answerable for his deputy, upon any miscarriage; unless the deputy is duly allowed and sworn, for then he is constable. *Wood, b.* 1. *c.* 7.

Petty constables and tithingmen are elected by the parish, and sworn in their offices at the court leet, and sometimes by justices of the peace Petty constables, how chosen.

in the sessions: in case any constable, dies, or goes out of the parish, any two justices can make and swear a new constable, until the lord of the leet shall hold a court, or until the next quarter sessions, who shall approve of the said officers so made and sworn or appoint others. *Stat.* 13 & 14 *Car.* c. 12 §. 15. 2 *Stra.* 798, 1050. *Mod.* 13. 2 *Ro. Rep* 557. *Bulst.* 174. *Moor* 845. *Lev.* Rep. 233.

The sessions may remove high constables and petty constables, the justices there being the best judges in these cases. *Salk.* 150.

Chusing high constables.

The usual manner now is, that the high constables of hundreds be chosen either at the sessions, or by the greater number of the justices of the division; and that they be sworn at sessions, or by warrant from the sessions, which course hath been often allowed and commended by the justices of assize. *Dalt.* c. 28.

Petty constables appointed by justices of the peace.

Every petty constable being a principal peace officer, and it being necessary for the preservation of the peace, that every vill should be furnished with one; the justices of the peace, ever since the institution of their office, have taken upon them, as conservators of the peace, not only to swear the petty constables which have been chosen at a torn or leet, but also to nominate and swear those who have not been chosen at any such court, on the neglect of the sheriffs or lords to hold their courts, or to take care that such officers are appointed. And as this power of justices of the peace has been confirmed by the uninter-

rupted

upted uſage of many ages, it ſhall not now be diſputed, but ſhall be preſumed to have been grounded on ſufficient authority. Some indeed have carried this point ſo far, as to allow the juſtices at their ſeſſions, to ſwear one who was choſen at the leet, and unduly rejected by the ſteward, who had ſworn another in his place. 2 *Haw.* 65.

Where there hath been no conſtable before.

M. 21 *C.* 2. The juſtices of the county of *Northampton*, at their general ſeſſions, choſe a conſtable for *Holmby*; and for his not coming in to take his oath, proceeded againſt him. Such proceeding being removed by *certiorari* into the *King's Bench*, it was moved on affidavits, that there had not been a conſtable there for fifty years before, and that he might be diſcharged; alledging alſo, that *Holmby* was a privileged place, and that all the inhabitants were the duke of *York*'s tenants: but the court held, that they could not diſcharge him on motion, and ſaid the matter muſt be determined by action of falſe impriſonment, or ſome other way; and inclined ſtrongly that he could not any way be diſcharged: for, by the court, tho' originally conſtables were chosen in leets, yet the conſtable being an officer whoſe duty it is to keep the peace, the juſtices may chuſe him in caſes of neceſſity; as in the hamlets about the *Tower*, the juſtices, by reaſon of the increaſe of buildings, where there was formerly but one conſtable, choſe five, and it was ruled they might do ſo; and they ſeemed to incline, that though formerly there had been none, yet they might chuſe

one if they ſhould think it convenient. 1 Bac. *Abr. Conſt. A.*

When conſtables are appointed, the ſteward of the court leet, or the juſtices, adminiſter to them the following oath.

Oath of conſtables.

You ſhall well and truly ſerve our ſovereign lord the king, and the lord of this leet (if appointed in the court-leet) in the office of a conſtable, in and for the hundred of *A.* or pariſh of, *&c.* until you be thereof diſcharged according to the due courſe of law, or for the year enſuing, and until another ſhall be ſworn in your room: you ſhall from time to time well and truly do and execute all things belonging to the ſaid office, according to the beſt of your knowledge. So help you God.

Of the power and duty of conſtables without warrant from a juſtice of the peace.

Conſtables being originally inſtituted for the better preſervation of the peace, they may by the common law arreſt felons, and all ſuſpicious perſons that go abroad in the night and ſleep by day, or reſort to bawdy houſes and keep ſuſpicious company. 2 *Haw. P.* 61, 62.

And by the ancient common law, the conſtable was to preſent at the torn or leet, those within his precinct who were not admitted into ſome tything, and who had not ſworn to the king's allegiance; and it ſeems that by the law in uſe at this day, he ought to preſent all offences requirable, in the torn or leet. *Lamb. Conſt.* 5, 6. 45 *Ed.* 3. *De Sheriff* 388.

Conſtable, a conſervator of the peace.

Every high and petty conſtable are by the common law conſervators of the peace. *Haw.* 33. *Cromb.* 6. *c.* 1.

If any man ſhall make an affray or aſſault upon another in the preſence of the conſtable, or ſhall threaten to kill, beat, or hurt another, or ſhall be in a fury ready to break the peace, the conſtable may commit him to the ſtocks, or other ſafe cuſtody for the preſent, and afterwards may carry him before a juſtice, or to gaol, until he ſhall find ſurety for the peace, which ſurety the conſtable himſelf may alſo take by obligation, to be ſealed and delivered to the king's uſe; and if the party will not find ſurety to the conſtable, he may impriſon the party until he ſhall do it. *Dalt. c.* 1.

May commit for an affray in his preſence.

He cannot however require ſurety of the peace, unleſs the offence be in his own view, and not if committed out of his ſight; for he cannot take any man's oath that he is afraid of death, becauſe he is not a judge of record; which is the reaſon that an obligation taken by him ſhall be in his own name, and not in the king's name; and the ſame ſhall be certified at the ſeſſions of the peace. *Cro. Eliz.* 375, 376.

But not when he is abſent.

If there is an affray in a houſe, the conſtable may break open the doors to preſerve the peace; and if affrayers fly to a houſe, and he immediately follow, he may break open the doors to take them. *Dalt. cap.* 8, 67.

But he cannot of his own authority, as is before intimated, compel a man to find ſureties who is delivered into his hands, as having broken the peace in his abſence, but ought to carry him before a juſtice of the peace; neither can he arreſt a man for an affray out of

his view, without a warrant from a justice of peace, unless a felony were done, or likely to be done. *Lamb.* 133. *Cro. Eliz.* 375. *Owen* 105.

Antient oath. *Barl.* 141. *Dalt. Just. Edit.* 1643.

Formerly constables were sworn to several articles, *viz.* To suppress and present affrays; arrest armed men; present bloodshed and drunkenness; apprehend felons; present gaming-houses and gamesters; make hue and cry; punish idle persons, night-walkers, *&c.* present rescues; apprehend rioters; punish vagabonds; execute warrants; keep watch, *&c.*

The duty of high constables alone.

The high constable has the direction of the petty constables, headboroughs, and tithingmen within the hundred.

To keep the peace, and oversee other parish officers.

His duty in general is to keep the peace, and apprehend felons, rioters, *&c.* to make hue and cry after felons; and take care that the watch be duly kept in the hundred, and that the statutes for punishing rogues and vagabonds be put in execution. He ought to present unlawful gaming, tipling and drunkenness, bloodshed, affrays, *&c.* To return all victuallers and alehouse-keepers that are unlicensed, and such persons as entertain inmates; he shall present bakers who sell bread under weight; brewers selling beer to unlicensed alehouses; forestallers, ingrossers, *&c.* *Dalt. c.* 28.

Make presentments, execute warrants, and make returns, &c.

He is also to present the defaults of petty constables, headboroughs, *&c.* who neglect to apprehend rogues, vagabonds, and idle persons, whores, night-walkers, *&c.* and also all defaults in repairing highways and bridges and

and the names of those who ought to repair them; scavengers who neglect their duty, and all common nuisances: and he is to execute warrants directed to him by justices of peace; and make returns to the sessions of the justices, to all the articles concerning his office. *Lamb.* 125.

The high constable hath power to determine complaints of clothiers and spinners, and other labourers, by virtue of an old statute relating to not paying wages in ready money, *&c.* which incurs a forfeiture of three times the value of the wages; and on non-payment of the forfeitures, *&c.* may commit the party till paid. *Stat.* 4 *Ed.* *c.* 1. In respect of clothiers.

A high constable has power to enter into any place to search for ropes, *&c.* for stretching of cloth, and if he finds any, he is to deface them; and if the owners shall afterwards make use of them, such high constable may seize and sell them, and distribute the money to the poor. *Stat.* 39 *Eliz.* *c.* 20. Persons resisting the constable forfeit 10 *l.*

On warrants from the justices, the high constables are to summon the petty constables to meet and prepare lists of persons qualified on juries. *Stat.* 4 *W.* & *M.* *c.* 24. Jurors.

And on receiving such lists from the petty constables, they are to deliver them over to the quarter-sessions. *Stat.* 3 *G.* 2. *c.* 25. § 3.

A high constable neglecting to summons the petty constables forfeits 10 *l.* *Stat.* 3 & 4 *Ann.* *c.* 18. § 5.

The manner of election, and the oath and office of constables in the city of *London*, being Constables in *London*.

ing different with respect to other constables appointed in the country, the following observations may be necessary.

Number of constables.

The city of *London* is divided into 26 wards, and every ward into a number of precincts proportioned to the size of the ward; over each of which precinct is a proper constable.

Manner of election.

These constables ought all to be freemen of the city: they are nominated by the inhabitants of the precinct on St. *Thomas*'s day, and confirmed or disallowed at the wardmote; and after they are confirmed, they are sworn in their offices at a court of aldermen, on the next *Monday* after *Twelfth-day*. *Calthr. Rep. p.* 129.

Particulars of their oath.

To keep the king's peace to the utmost of their power; to arrest affrayers, rioters, and such as make contests to the breach of the peace, and to lead them to the house of correction, or compter of one of the sheriffs; and in case of resistance to make outcry upon them, and pursue them from street to street, and from ward to ward, till they are arrested.

Nuisances, defaults in ordinances, and death of freemen, presentments.

They are to search for common nuisances in their respective wards (being required by scavengers, *&c.*) and, upon request, to assist the beadle and rakers in collecting their salaries and quarterage; to present to the mayor and ministers of the city, defaults relating to the ordinances of the city; to certify in the mayor's court, once a month, the names and surnames of all freemen deceased; and also of the children of such freemen, being orphans.

And

And by the articles of the wardmote inquest, constables are to certify the name, surname, place of dwelling, profession and trade of every person who shall newly come to inhabit in their precincts, and to keep a roll thereof: in order to this, they are to make enquiry, at least once a month, into what persons are lately come to lodge and sojourn there. Farther articles.

And if they find by their own confessions, or the records of the alderman's books, that such new comers are ejected from any other ward for bad living, or any misdemeanor, and refuse to find sureties for their good behaviour, warning is to be given them and their landlords, that they depart; and on refusal, they may be imprisoned, and their landlords fined a year's rent, agreed for by such new comer. *Calth. Rep.* 138. New comers into parishes, &c.

The constables in each ward are to attend the watch by turns, one every night, and to go the rounds; and with the beadles every night are to warn such persons as are to serve upon the watch in their several precincts; and if they refuse to appear, the constable may hire others in their stead, and they shall pay the constable, according to the custom of the city. The common council appoint the watchmen. Watch in *London.*

They are to certify to the lord mayor and common council of the city, the names of all such persons as shall interrupt or hinder them in the discharge of their offices. Of obstructing constables.

These are the ancient articles of the oath, and extraordinary business of the constables Extent of their power.

of

of *London*; to which I am to add, that in the city of *London* by the custom, a constable is not only a constable within the precinct for which he is chosen, but over all the ward, and over all the city of *London*. *Pa Wyld. Trin.* 30 *Car.* 2. *Anon.*

Nightly constables, and watch, how appointed by 10 Geo. 2. c. 22.

By the 10 *G.* 2. *c.* 22. The court of common council are to meet the first of *October* yearly, and order a proper number of nightly constables, beadles and watchmen, for the city of *London* and liberties; and the aldermen and common council men of wards, are to make an assessment on the inhabitants, to bear the charge thereof.

Time of watching, and other business.

The constable shall keep watch and ward, from the tenth of *September* to the tenth of *March*, from nine o'clock in the evening till seven the next morning; and from the tenth of *March* to the tenth of *September*, from ten in the evening till five next morning; and shall use his best endeavours for preventing fires, robberies, and disorders, and attend malefactors.

How often to go their rounds.

They shall go twice or oftener about their wards, in every night; and watchmen are to apprehend all suspected persons, *&c.* and deliver them to the constable of the night, who shall carry them before a justice of the peace.

Misbehaving, forfeiture.

Any constable misbehaving himself shall forfeit 20*s.* And the lord mayor, or two justices of the city, may hear and determine offences, and levy penalties by distress of goods, *&c. stat.* 10 *G.* 2. *c.* 22.

Such

Such as are chosen into the office of constable, are obliged to place the king's arms, and the arms of the city, and their names over their doors; and if they reside in alleys, at the end of such alleys, towards the street, to signify that a constable lives there, and that they may be the more easily found when wanted.

Arms of the city, &c. at their door.

Any constable who shall see a person expose an infant in the street, who refuses to take it away, he may apprehend and detain such person till he or she consent to take care of it.

As the constable is the proper officer to a justice of the peace, he is bound to execute his warrants; and therefore it hath been resolved, that where a statute authorizes a justice of the peace to convict a man of a crime, and to levy the penalty by warrant of distress, without saying to whom such warrant shall be directed, or by whom it shall be executed, the constable is the proper person to serve such warrant, and indictable for disobeying it. 2 *Hawk.* 262.

Subordinate to the justices.

When a warrant is directed generally to all constables, no one can execute it out of his own precinct: but if it be directed to a particular constable by name, he may execute it any where within the jurisdiction of the justice. 1 *Salk.* 176. *Carth.* 508.

A constable, in executing a warrant need not shew it to the party, although he demand sight of it; but in making an arrest, he ought to acquaint him with the substance of it. 6 *Co.* 54. 9 *Co.* 69.

An

An unlawful arrest without a justice's warrant, cannot be made good by a warrant taken out afterwards. *Dyer* 244.

Double costs.

When an action is brought against a constable, for any thing done by virtue of his office; he, and all those which in his aid, or by his command, shall do any thing concerning his office, may plead the general issue, and give the special matter in evidence, and if he recovers, he shall have double costs. 7 *J.* c. 5.

No action if he delivers a copy of the warrant.

The constable formerly was bound to take notice of the jurisdiction of the justice; and if the justice issued a warrant in any matter wherein he had no jurisdiction, the constable was punishable for the execution of it: but by the 24 *G.* 2. c. 44. is is enacted, That no action shall be brought against any constable or other person acting by his order, for any thing done in obedience to the warrant of a justice of the peace, until demand hath been made, or left at the usual place of his abode by the party, or by his attorney, in writing signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for six days after such demands: and if after compliance therewith, any such action shall be brought, without making the justice who signed such warrant defendant, on producing and proving such warrant at the trial, the jury shall give their verdict for the defendant notwithstanding any defect of jurisdiction in the justice. And if such action be brought jointly against the justice and constable, pr

proof of such warrant, the jury shall find for the constable, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict be given against the justice, the plaintiff shall recover his costs against the justice, to be taxed in such manner by the proper officer, as to include such costs as the plaintiff is liable to pay to such defendant, for whom such verdict shall be found as aforesaid. *s.* 6.

And no action shall be commenced against any constable, unless within six months after the act committed. 24 *G.* 2. *c.* 44. *s.* 8.

No action but within six months.

If a constable is assaulted in the execution of his office, he need not go back to the wall, as private persons ought to do; and if in the striving together, the constable kills the other it is no felony; but if the constable is killed, it shall be deemed premeditated murder. *Hale's pl.* 37. 1 *H. H.* 457.

Constable assaulted need not go back to the wall.

By the *stat.* 27 *Geo.* 2. *cap.* 20. *sect.* 2. a constable executing a justice's warrant for levying a penalty, or other sum of money directed by an act of parliament, by distress, may deduct his reasonable charges of taking, keeping, and selling the goods distrained; returning the overplus on demand, after such penalty or sum of money and charges deducted.

Constable may deduct for making distress.

By the *stat.* 3 *Jac.* 1 *C.* 10. *sect.* 1. It is enacted, That every person who shall be committed to the common or usual gaol, within any county or liberty, by any justice, for any offence or misdemeanor, such person so to be committed, having ability thereunto, shall bear his own reasonable charges, for so conveying

Charges of sending an offender to gaol.

veying him to the said gaol, and the charge also of such as shall be appointed to guard him thither: and if any such person shall refuse at the time of his commitment to the said gaol, to defray the said charges, or shall not then pay the same; then such justice shall, by writing under his hand and seal, give warrant to the constable of the hundred, or constable of the township where such person shall inhabit, or from whence he shall be committed, or where he shall have any goods within the county or liberty, to sell such, and so much, of the goods and chattels of the said person so to be committed, as by the discretion of the said justice shall satisfy and pay the charges of such his conveying and sending to the said gaol; the appraisement to be made by four of the honest inhabitants of the parish where such goods shall be; and the overplus delivered to the party.

By the *stat.* 27 *Geo.* 2. *c.* 3. *sect.* 1. It is enacted, That when any person not having goods or money in the county where he is taken, sufficient to bear the charges of himself and those who convey him, is committed to gaol, or the house of correction, by warrant from a justice, then, on application by the constable or other officer, who conveyed him to any justice for such county or place, such justice shall, upon oath, examine into and ascertain the reasonable expences, and shall, without fee, by his warrant, order the treasurer to pay the same, which the treasurer is required to do as soon as he receives such warrant.

Wherea

Whereas constables may be at a great harge in relieving, conveying with passes, nd carrying rogues, *&c.* to the house of correction, and have no power to make rates to eimburse themselves; therefore such constables, together with the churchwardens and verseers, and other inhabitants, shall make a ate in the same manner as the poor rate by the 3 *El. c.* 2. which being confirmed under the ands and seals of two justices, may be levied y distress. 13 & 14 *C.* 2. *c.* 12. Charges for vagrants

It is observed by Mr. *Nelson* and Mr. *Shaw*, at this rate may be made for the purpose ovementioned, and for other parish charges; ut there seems to be no such power given y the statute.

Every high constable at the general or quarr session, shall if thereunto required, account r the general county rate by him received, n pain of being committed to gaol until e shall account; and shall pay over the money into their hands, according to the order the said court, on the like pain: And their counts and vouchers after having been passed the said sessions, shall be deposited with the erk of the peace, to be kept amongst the cords, and inspected by any justice of the ace without fee. 12 *G.* 2. *c.* 29. *s.* 8. Account.

And in the same manner as constables are osen, in the same manner they are to be moved; so that if there shall be cause to move and put an high constable from his ce, it hath not been thought fit that any e or two justices should do it upon their cretion, but that it should be done by the greater Removal.

greater part of the justices of that division, and that for the same just cause; or else that it be done at the sessions. *Dalt. c.* 28.

And it appears clear, that the sheriff or steward of the leet, having power to place a constable in his office, have consequently a power to remove him. 2 *Haw.* 63.

And the justices of the peace have always used, for sufficient reason, to displace such constables, as have been chosen and sworn by them. 2 *Haw.* 65.

Appointing constables in Westminster

By the 29 *G.* 2. *c.* 25. The dean, or high steward of *Westminster*, or his deputy, is required (calling to his assistance the burgesses if the dean, or high steward or his deputy shall think fit) at the court leet, to be holden on *Tuesday* next after *Michaelmas-day* in every year, yearly to appoint eighty fit persons residing within the city and liberty of *Westminster*, being artificers, or persons using any trade of buying or selling (ale-house-keepers victuallers or persons retailing spirituous liquors, only excepted) to be constables for the said city and liberty, being duly presented thereto in manner after mentioned.

The constables who shall be so appointed shall be chosen out of the several parishes in *Westminster* as followeth, *viz.*

Out of the parish of St. *Margaret* —
Out of St. *John* the *Evangelist* —
Out of St. *Martin* in the Fields —
Out of St. *George*, *Hanover-square*
Out of St. *James's* —
Out of St. *Ann.* — —
Out of St. *Paul*, *Covent Garden* —

Out of St. *Clement Danes* — 6
Out of St. *Mary le Strand* — 2

By this act the summoning a leet jury is rected, who are to present double the num- r above directed for each parish, of persons serve the office of constable, out of which umber the court shall, in the proportion ove mentioned, appoint eighty persons to rve the office of constable for the year en- ing. 29 *G.* 2. *c.* 25.

Any person so appointed, and refusing to rve the office of constable, shall forfeit 8 *l.* d no person is to serve as constable more nce in seven years.

Appointing high constable in Westminster.

And by the same statute, the said dean or gh steward, or his deputy, shall at the said urt leet, to be holden on *Tuesday* next after *Michaelmas* day yearly, appoint an able per- n, being an artificer, or using some trade of ying and selling, not being an ale-house- eper, victualler or retailer of spirituous li- ors, to be high constable for the city and erty of *Westminster* for the space of one year, until another be appointed. No person all serve the office of high constable for more an three years together. The penalty is *l.* for refusing to serve the office of high nstable.

Of annoyances in Westminster.

By the statute 31 *Geo.* 2. *c.* 17. All repairs pavements, and removal of annoyances longing to parish churches, publick build- gs or grounds, to be done by the church- rdens; if belonging to markets, by the oprietors, *&c.* to hospitals, alms-houses, aritable foundations, *&c.* by the principal

officer

officer thereof, and to private grounds, by the owners. The annoyance jury may present bad pavements and annoyances, first giving notice of their intention to the proper persons, and if the same be not removed within fourteen days, may amerce the said persons, according to the nature of the offence. *Sect.* 1.

The annoyance jury, where requisite, may order the speedy removal of any annoyances or obstructions, and on neglect or refusal to comply, may amerce the offender in a sum not exceeding 40 *s.* *Sect.* 6.

No person shall set up a hourd or fence in the streets without licence first obtained from the court, for which licence shall be paid 5 *s.* under the penalty of 40 *s.* such licence to be no defence against prosecution for a nuisance. *Sect.* 7.

Weights and measures in *Westminster* to be sized, sealed, and marked, by the proper officer for sealing and marking the same; for which shall be paid, for every bushel 4 *d.* for every half bushel 2 *d.* for every peck, half peck and quarter peck 1 *d.* for all half pecks, or quarter pecks, per dozen 10 *d.* for every sack 2 *d.* for every ale and beer measure 1 *d.* for every one hundred weight 4 *d.* for every half hundred weight 2 *d.* for all pound weights, and all other weights under half a hundred weight, one halfpenny, for all ounce weights, and all other weights under a pound, one farthing. All weights and measures belonging to persons who deal by weight or measure within the said city and liberty, which

all not be ſealed and marked as aforeſaid, all be deemed unlawful, and may be deoyed, and the owners amerced in a ſum t exceeding 40 *s.* *Sect.* 9.

The ſealing officer ſhall pay half yearly to e deputy ſteward, a moiety of his profits. *ct.* 10.

Aged perſons are exempted from ſerving as nſtables, or as leet or annoyance jurymen. *ct.* 13.

Adjournments of the court-leet, court y amerce jurymen for non-attendance, or her neglect. *Sect.* 14.

The high bailiff, or his deputy, ſhall exete all warrants of the court-leet, or court burgeſſes, and pay over the ſums received, penalty of being fined by the court.

Fines impoſed on the high bailiff, *&c.* for fault in the premiſſes, to be levied by the gh conſtable by diſtreſs and ſale. *Sect.* 15.

Conſtables at large, of their keeping the peace, &c.

The duty and authority in general of conbles in their ſeveral towns, pariſhes, *&c.* is arly the ſame as the high conſtable's in his ndred: they are to keep the peace, and may, already obſerved, break into a houſe to ſee peace kept, make freſh purſuit into anoer county, *&c.* command all perſons to ſt them, and take into cuſtody any om they ſee committing a felony, or breakg of the peace.

Particular duties of conſtables.

The duty of a conſtable is to be conſired under the ſeveral heads following, *&c.* rays, alehouſes, arms, arreſts, artificers, ult, bakers, baſtardy, bawdy-houſes, begs, bridges, butter, buttons, cambricks,

carriages, cattle, clothiers, coals, conve-
ticles, corn, curriers, customs, deer stealing
deserters, disorderly houses, distillers, di-
tresses, drunkenness, dyers, escapes, excise
felons, fire, fish, forcible-entry, foreign goods
forestallers, game, gaming, gaol, gaolers
gunpowder, hawkers, hay market, hedge
breakers, highways, hops, horses, houses of
correction, hue and cry, inns, juries, labour-
ers, lamps, land-tax, linen, lunatics, mad-
men, maltsters, manufactures, measures, mi-
litia, night-walkers, orchards robbed, phy-
sicians, plague, players, popish recusants
post letters, presentments, prisons, prisoners
riots, robbery, rogues, sail-cloth, salt, ser-
vants, shoemakers, smugglers, soldiers, spi-
rituous liquors, Sundays, supersedeas, swear-
ing, taylors, tithes, tobacco, turnpikes, va-
grants, warrants, watch, watermen, weights
wrecks, &c.

Of billeting soldiers.

By the 31 *C.* 2. *c.* 1. No military or civil officer, nor any other person whatsoever shall presume to place, quarter or billet any soldier, on any subject of any degree, quality or profession whatsoever, without his consent and every such subject may refuse to sojourn or quarter any soldier, notwithstanding any command, order or warrant for billeting whatever. *Sect.* 54.

Constables may billet.

By the mutiny act, the constables and other chief officers and magistrates of cities, towns villages, and other places, and in their default or absence, any one justice in or near such place, and no other, shall and may quarter and billet the officers and soldiers in

inns

nns, livery stables, ale-houses, victualling-ouses, and the houses of sellers of wine by etail to be drank in their own houses, or laces thereunto belonging, (except persons ho keep taverns only, being free of the intners company in *London*) and all houses f persons selling brandy, strong waters, yder, or metheglin, by retail to be drank in ouses, (except the houses of distillers who eep places of distilling brandy and strong iquors, and of shopkeepers * whose dealings hall be more in other goods than brandy or rong waters, and who do not suffer tippling in heir houses) and no other, and in no private ouses whatsoever; nor shall any more billets e ordered, than there are effective soldiers; nd if any constable, or such like officer, as foresaid, shall quarter or billet any such fficer or soldier in any private house, without he consent of the owner, such occupier shall ave his remedy at law against such constable r officer, for damages; and if any military fficer shall presume to quarter soldiers otherise than by this act, or shall offer any meace to any mayor, constable, or other civil fficer, tending to deter them from doing heir duty, he shall, on being convicted therefore before any two of the next justices, by the ath of two witnesses, be cashiered and disbled to hold any military employment; provided the conviction be affirmed at the next uarter sessions, and a certificate thereof be

* Shopkeepers, by 17 G. 2. c. 17. are not allowed to retail ituous liquors.

transmitted to the judge advocate, who shall certify the same to the next court martial.

If any person shall be aggrieved, or think himself aggrieved, by having more soldiers billeted than is his proportion, on complaint thereof to one justice, or if the person so billeting be a justice, then on complaint to two justices, they may relieve him.

No justice of the peace having any military command, shall be concerned in quartering soldiers under his immediate command; and all things done by him therein shall be void.

Constables not to take a reward for billeting.

If any constable, or other proper officer, shall neglect his duty in billeting, for the space of two hours, sufficient notice having been given before of the arrival of the soldiers, or shall take any reward to excuse any person; or if any person liable shall refuse to receive any soldiers, or to furnish them as required by this act, and be thereof convicted, before one justice, by confession, or cath of one witness, he shall forfeit 5 *l.* (or any sum not exceeding 5 *l.* nor less than 40*s.*) by distress, by warrant of such justice, to be directed to any other constable, or overseer where the offender shall dwell, for the use of the poor of the said parish.

Any person who shall take any money of any person, to be excused the quartering of soldiers, shall be cashiered and incapacitated. Any officer, military or civil, who shall quarter any of the wives, children or servants, of officer or soldier, in any house, against the consent of the owner; if he is an officer of the army, he shall, on proof made thereof to the

he commander in chief of the army, or udge advocate, be cashiered; and if a constable, or other civil officer, he shall forfeit o the party grieved 20 *s.* on proof thereof to he next justice, by distress.

All officers and soldiers billeted as above irected, shall be received and furnished with iet and small beer, paying for the same as ereafter mentioned.

If any person on whom soldiers are billeted r quartered, shall chuse rather to furnish hem with candles, vinegar, and salt, and with either small beer or cyder, not exceeding five pints a day, gratis, and also allow hem the use of fire, and the necessary utensils for dressing and eating their meat, and hall give notice thereof to the commanding fficer, and shall furnish the same accordingly; they shall then provide their own victuals, and the officers shall pay the sums out f the subsistence money, for diet and small eer to such soldiers, and not to the persons n whom they are quartered; except on a arch, or recruiting.

What soldiers are to be allowed.

Where horse or dragoons shall be quarered, the men and their horses shall be billeted in one and the same house (except in ase of necessity;) and in no case there shall e less than one man billeted, where there hall be one or two horses, nor less than two en where there shall be four houses, and so n the same proportion.

Military officers may remove or exchange en or horses, with others quartered in the me town; provided the numbers so ex-

changed are equal; and the constables, or other officers, shall billet them accordingly.

A justice of the peace by his warrant, may command any constable or other officer, to give an account in writing of the number of officers and soldiers billeted by him, and the names of the persons on whom they are billeted, with the place where they dwell, and the signs, if any; that it may appear where they are quartered, the better to prevent abuses in billeting of them.

The petty constables shall in *Westminster*, deliver lists on oath at every quarter sessions, of the houses and persons obliged to receive soldiers quartered, and the number billeted in each house; the lists to remain with the clerk of the peace, to be inspected without fee; and the clerk shall deliver copies at 2 *d.* a sheet, containing 150 words; constables making default shall forfeit 5*l.* to the poor by distress, by warrant of one justice; for want of distress, to be imprisoned not exceeding three months, nor less than one.

All officers who shall receive the pay or subsistence money, shall immediately upon receipt thereof, give public notice to all persons keeping inns or other places where soldiers are quartered, to repair to their quarters, at such time as they shall appoint for distribution thereof to the officers and soldiers, which shall be within four days after receipt thereof: And the said inn-keepers and others shall be first paid, before any part of the pay be distributed to the officers or soldiers; pro-

vide

vided the accounts exceed not, for a commission officer of horse under the degree of a captain, for diet and small beer 2 *s.* a day; nor for a commission officer of dragoons under the degree of a captain 1 *s.* and for each horse 6 *d.* nor for one light-horseman's diet, and hay and straw for his horse 1 *s.* nor for one dragoon's diet, and hay and straw for his horse 1 *s.* nor for one foot soldier's diet 4 *d.*

A constable may take up any one reasonably suspected to be a deserter, and carry him before a justice of the peace, who shall examine such suspected person, and if he shall be found to be a deserter, either by his own confession, or the oath of one witness, or by the knowledge of such justice, he shall be sent by such justice to the county gaol or house of correction (or if in *London* to the *Savoy*) and transmit an account thereof to the secretary at war; and the keeper of such gaol or house of correction, shall receive the subsistence of such deserter for his maintenance while in custody, but shall not be intitled to any fee for his imprisonment.

What methods are to be taken to apprehend a criminal who escapes from England into Scotland.

An extract of an act of the 13 *G.* 3. *c.* 31. for the more effectual execution of the criminal laws in the two parts of the united kingdom. As it often happens that felons and malefactors in *England* make their escape into *Scotland*, and also felons in *Scotland* make their escape into *England*; whereby their offences often remain unpunished, there being no sufficient provision by the laws of the united kingdom for apprehending such offenders: It is therefore enacted, That if any person

against whom a warrant shall be issued by a justice of any county, &c. in *England*, for any crime against the laws of that part of the kingdom, shall escape into any place of *Scotland*, the sheriff, or steward-depute, or substitute, or any justice of the county or place where such person shall escape into, may indorse his name on the warrant, which shall be a sufficient authority to the person bringing such warrant, and to all persons to whom such was originally directed; and also to all sheriffs officers, stewards officers, constables, and peace officers, of the county or place where such shall be so indorsed, to execute the said warrant in the county or place where it is so indorsed, by apprehending the person against whom it is granted, and conveying him into the county, riding, division, city, &c. of *England*, being adjacent to *Scotland*, in which the crime was committed, and before one of the justices of the city, liberty or place, to be there dealt with according to law: or, in case the crime was committed in a county not next adjacent to *Scotland*, then to convey him into any county of *England* next adjacent to *Scotland*, and before one of the justices of such county, who shall proceed with regard to such person in the manner directed by act 24 *Geo.* II. intituled, *An act for amending and making more effectual a clause in an act, passed in the last session of parliament, for the apprehending of persons in any county or place, upon warrants granted by justices of the peace of any other county or place,*

as

s if the said person had been apprehended n the said county.

If any person against whom a warrant hall be issued by the lord chief justice general, lord justice clerk, lords commissioners of justiciary, or by any sheriff, steward-depute, substitute, or justice of *Scotland*, for any crime against the laws of that ingdom, shall escape into any place of *England*, any justice of peace of the county, iding, division, or place, where such person shall escape into, may indorse his name n the said warrant, which shall be a sufficient authority to the person bringing such warrant, and to all persons to whom such warrant was originally directed; and also to constables or peace officers of the county, iding, town or place, where such shall be o indorsed, to execute the said warrant n the county, riding or place, where it is o indorsed, by apprehending the person gainst whom it is granted, and conveying im into the county or place of *Scotland*, eing adjacent to that part of *England* where he crime was committed, and before the heriff, or steward-depute, *&c.* of such county r place, to be there dealt with according o law: or, in case the crime was committed n a county not next adjacent to that part f *England*, then to convey him into any ounty of *Scotland* next adjacent to that part f *England*, and before the sheriff, or steward-depute, or one of the justices of such ounty; which sheriff, steward, or justice, is o proceed with regard to such person accord-

What methods to be taken against a criminal, who escapes from Scotland into England.

ing to the rules and practice of the law of *Scotland*, as if the said person had been apprehended in the said county.

By whom the expences are to be defrayed.

The expence of removing prisoners shall be repaid to the person defraying the same by the treasurer of the county of that part of *England*, or by the sheriff, or steward-deputy or substitute, of the county of that part of *Scotland*, in which the crime was committed, the amount of that expence being previously ascertained by an account thereof, verified upon oath before the justices of the peace of such county, and signed by them.

Felons may be tried where the theft was not committed.

If any person having stolen or feloniously taken money, goods, or effects, in either part of the united kingdom, shall afterwards have the same money or effects, or any part thereof, in his custody, in the other part of the united kingdom, it shall be lawful to indict, try, and punish such person for the theft or larceny in that part of the united kingdom where he shall so have such money or effects, as if the said money, cattle, or other effects, had been stolen in that part of the united kingdom.

Receivers may be tried where the offence was not committed.

If any person, in either part of the kingdom, shall hereafter receive money, cattle, or effects, stolen, or feloniously taken, in the other part of the kingdom, knowing the same to be stolen, or feloniously taken; every such person shall be liable to be indicted, tried, and punished for such offence in that part of the united kingdom where he shall so receive or have the said money, goods, or effects, in the same manner, to all intents,

f the ſaid money or effects had been origi-
nally ſtolen, or feloniouſly taken, in that part
of the united kingdom.

Highways.

IT is agreed that there are three kinds of ways; the firſt, a foot-way; ſecondly, a foot and horſe-way; thirdly, a foot, horſe, and cart-way. 1 *Inſt.* 56.

Any one of the above mentioned ways, which is common to all the king's ſubjects, whether it leads directly to a market town, or only from town to town, and does not terminate there, but is likewiſe a thoroughfare to other towns, may properly be called a highway. 1 *Haw.* 201.

And therefore, every way from town to town may be called a highway, becauſe it is common to all people; and conſequently that a nuiſance therein is a common nuiſance, and puniſhable by indictment; but a way to a pariſh church, or to the common fields of a town, or to a private houſe, or perhaps to a village which ends there, and is ſolely for the benefit of the inhabitants of ſuch pariſh, houſe, or village, may properly be called a private way, but not a highway, becauſe it doth not belong to the people in general, but only to ſome particular perſons; each of whom may, it ſeems, have an action on the caſe for a nuiſance therein. 1 *Haw.* 201.

If I have a private way without a gate, and a gate is hung up; an action lies, upon

the caſe, for I have not my way as I had before. *Litt. R.* 267.

But if a way belonging to any man becomes not paſſable, or very bad, by the owner of the land tearing it up with his carts, ſo that it becomes filled up with water; yet he who has the way cannot dig the ground to let out the water, he having no intereſt in the ſoil. *Godb.* 52. But he may, in ſuch caſe, bring his action againſt the owner of the land for ſpoiling the way, or perhaps he has a right to go out of the way, upon the land of the wrong doer, as near to the bad way as he can.

But where a private way is ſpoiled or deſtroyed by perſons who have a right to paſs thereon, and not occaſioned by the default of the owner of the land; it ſeems that thoſe who have the benefit of the way ought to repair it, and not the proprietor of the ſoil, unleſs he is bound thereto by long cuſtom or ſpecial agreement.

A river common to all men, is called an highway. 1 *Haw.* 201. And in all indictdictments for a robbery on the river *Thames*, it is called the King's highway.

Where a new road is made, purſuant to a writ and inquiſition thereupon found, after the perſon who ſued it out hath once made the ſaid road, the pariſhioners ought to keep it in repair for the future; becauſe, as they are diſcharged from the repairing of the old road, no new burden is laid upon them by ſuch new road, their labour being only transferred from one place to another. 3 *Aik.* 766.

But

But if ſuch new road ſhall lie in another parish, the perſon who ſued out the writ, and his heirs, ought not only to make it, but alſo to keep it in repair, otherwiſe the parishioners would have a new and additional charge upon them, and no recompence by the former road being taken away. *Id. Venner and Lucy*, Jan. 29, 1764.

The freehold of the highway is his that hath the freehold of the ſoil; but the free paſſage is for all the King's ſubjects. 2 *Inſt.* 705.

It ſeems agreed, that the general charge of repairing all highways lies on the occupiers of the lands in the parish where ſuch highways are: There is however no doubt but particular perſons may be liable to the general charge of repairing a highway, in two caſes; that is, in reſpect of an incloſure, or by preſcription. And if the way is not ſufficient, any perſon may break down the incloſure and go over the land, and juſtify it, till a proper and ſufficient way is made. 3 *Salk.* 182.

Conſequently, if there be an old hedge which hath been time out of mind on one ſide of the way, and any perſon having land on the other ſide makes a new hedge, he ſhall be charged with the whole repair. 1 *Sid.* 464.

A particular perſon may be compelled to repair a highway, in reſpect of a preſcription, and a corporation aggregate may be bound to do it, by force of a general preſcription, that it ought and hath a long time uſed to do it, without ſhewing that it uſed to do ſo, for any conſideration; becauſe ſuch corporation in the opinion of law never dies, and if it were ever

bound

bound to perform such a duty, it must continue always so; nor is it any plea, that such corporation hath done it out of charity, for what it hath ever done, it shall be presumed to have been ever bound to do: but a person cannot be charged with such a duty by a general prescription from what his ancestors have done, unless some special reason be assigned, as the having lands descended from them, which are holden by such service. 1 *Haw.* 202.

It seems, however, that an indictment that charges a tenant in fee simple, with having used of right to repair such a way on account of the tenure of his lands, is certain enough, without adding, that his ancestors, or those from whom his estate descended to him, have always so done; for that is implied. 1 *Haw.* 283.

The indictment must however set forth, where those lands lie. 2 *H.* 181.

By the common law, any person may abate a nuisance to a highway, and remove the materials, but he cannot convert them to his own use. 1 *Haw.* 214.

To permit or suffer the ditches adjoining to a highway to be foul, in consequence of which it is impaired, is a nuisance at common law. 1 *Haw.* 212.

And it appears to be a nuisance at common law, to suffer the boughs of trees growing near the highway, to hang over the road so as to incommode the passage. 1 *Haw.* 212.

And it seemeth, that he who hath trees next adjoining to the highway, and hanging over it, so as to annoy the people, is bound by the common law to lop the same; and that any

person may justify the lopping such trees, so far as to remove the nuisance. 1 *Haw.* 213.

A gate erected in a highway is a common nuisance, as it interrupts the people in that free passage which they before enjoyed, and were intitled to; but where such a gate has continued there time out of mind, it shall be inferred, that it was set up at first by consent, on a composition with the owner of the land on the laying out the road; and in that case the people had never any right to a freer passage than that which they now enjoy. 1 *Haw.* 199.

It seems to be implied in all penal statutes, that no person ought to be convicted of any offence against them, without notice of the accusation made against him, and an opportunity of defending himself, therefore it seems certain, that no one ought to be punished for any of the said offences, without being called upon to answer for himself, and having liberty to traverse the matters that are alledged against him. 1 *Haw.* 219.

It is no excuse for the inhabitants of a parish, being indicted at common law for not amending and repairing the highways, that they have done what is required of them by statute; for these statutes being wholly in the affirmative, and made in aid of the common law, and to supply its defects, they shall not be construed to abrogate any provision thereby made for these purposes. 1 *Haw.* 204. So that at all events, the parish may be compelled to make their ways good.

Stat.

Stat. 13 G. 3. c. 78. intituled,

An act to explain, amend, and reduce into one act of parliament, the statutes now in being, for the amendment and preservation of the publick highways within that part of Great Britain *called* England, *and for other purposes.*

Preamble.

WHEREAS the laws now in being for the amendment and preservation of the highways, require some explanation and amendment, be it therefore enacted, by the King's most excellent Majesty, That from henceforth, upon the twenty-second day of *September*, in every year, unless that day shall be *Sunday*, and then on the day following, the constables, headboroughs, tithingmen, churchwardens, surveyor of the highways, and householders, being assessed to any parochial or publick rate of every parish, township, or place, shall assemble at the church or chapel of such parish, *&c.* or if there shall be no church or chapel, then at the usual place of publick meetings for such parish, *&c.* at eleven in the forenoon: And the major part of them, shall make a list of the names of at least ten persons living within such respective parishes, *&c.* who have an estate in lands, tenements, or hereditaments within such respective parish, or place in their own right, or in the right of their wives, of ten pounds *per annum*; or a personal estate of one hundred pounds; or are occupiers or tenants of houses, lands, *&c.* of the yearly value of thirty pounds: And

On *Sept.* 22, yearly, a list is to be made of at least ten persons, by the constables, &c. at the usual place of publick meetings.

Qualification of surveyors.

f there are not ten persons having such qua-
ifications, then they shall insert in such list
he names of so many of them as are so qua-
lified, together with the names of the most
ufficient inhabitants of such parish, *&c.* not
o qualified, as shall make up the number
en, if so many can be found; if not, so
any as shall be there resident, to serve the
ffice of surveyor of the highways: And the
onstable, headborough, or tithingman, of
ch parish, *&c.* shall, within three days af-
r such meeting, transmit a duplicate of such
t to one of the justices within the limit
ving in or near the same; and shall also re-
rn the original list, agreed upon at such
eeting, to the justices at their special ses-
ns in the week next after the *Michaelmas*
neral quarter sessions of the peace in every
ar; and shall also, within three days after
king the said list, give personal notices to,
cause notices in writing to be left at, the
ces of abode of the several persons con-
ned in such list, informing them of their
ng so named, that they may appear before
justices at the said special sessions to ac-
t such office, or to shew cause against
ir being appointed: And such justices are
hold such special sessions at such conveni-
places within their limits, as they shall
ge proper; and to give notice when and
ere they intend to hold the same to the
stables, headboroughs, or tithingmen, of
ry such parish, *&c.* at least ten days; and
said justices, from the said lists, by war-
t under their hands and seals, shall appoint

A duplicate of such list transmitted to one of the justices, and the original list to the special sessions, by the constable, &c.

Notices to the persons contained in the list.

The justices to give ten days notice of holding special sessions to the constables, &c.

and may appoint from the lists such number of surveyors as they shall judge fit;

one,

one or more of ſuch perſons, if he or the
ſhall think him or them qualified for th
office, if not, one, two, or more of the othe
ſubſtantial inhabitants or occupiers of land
living within three miles thereof, if any ſuc
can be found; which appointment ſhall, b
the conſtables, &c. be notified to every per
ſon ſo appointed by the ſaid juſtices, withi
three days; by ſerving him with the ſaid war
rant, or by leaving the ſame at his houſe
or uſual place of abode; and every perſon
appointed, if he accepts the office, ſhall b
ſurveyor of the highways for the ſaid pariſh
&c. for the year enſuing, and the ſaid juſti
ces ſhall then and there give ſuch ſurveyors
charge, for the better performance of the
duty. And if any of the ſaid perſons,
appointed, ſhall refuſe or neglect to appear
ſuch ſpecial ſeſſions, and accept the ſaid o
fice, or ſhall not, within ſix days after bei
ſerved with ſuch warrant of appointme
ſignify his acceptance thereof, in perſon,
by writing, to one of the ſaid juſtices,
ſhall forfeit five pounds; and if any perſ
ſo appointed by the ſaid juſtices, whoſe na
was not contained in ſuch liſt, ſhall refu
or neglect to accept the ſaid office, or ſh
not, within ſix days after being ſerved wi
ſuch appointment, ſhew to one of the juſtic
ſigning ſuch appointment, ſufficient ca
why he ſhould not ſerve, he ſhall forfeit fi
ſhillings: But no perſon who hath ſerved t
ſaid office for one year, ſhall be liable to
appointed for the ſame place within th
years, without his conſent; but if no ſu

which appointment ſhall be notified to the perſons named, by the conſtables, &c. and the ſurveyor ſhall hold his office for one year.

Juſtices to give a charge for the performance of ſurveyor's duty.

Perſons appointed from the liſt refuſing to ſerve ſhall forfeit 5 l.

and thoſe not in the liſt, on refuſal, ſhall forfeit 50 s.

No perſon who hath ſerved one year to be again appointed within three years after,

ſt ſhall be made and returned, or the ſaid ſtices ſhall make ſuch appointment, and the erſon appointed ſhall refuſe to ſerve, the ſaid ſtices, or two of them, ſhall, at the ſaid ecial or ſome ſubſequent ſeſſions, to be held ithin one month after, appoint ſome other erſon to be ſurveyor of ſuch place, at their ſcretion; and may fix ſuch ſalary for ſuch rveyor, out of the ſaid forfeitures, and all her forfeitures, fines, &c. to be levied, and iſed, under the authority of this act, with- ſuch place reſpectively, as ſuch juſtices all think fit, not exceeding one-eighth part f what ſhall have been raiſed by an aſſeſſ- ent of ſixpence in the pound, for the uſe f the highways within ſuch place; and the id juſtice may require the conſtables, head- oroughs, tithingmen, and ſurveyor, of every ch place, or any of them, to return to em, at ſuch time and place as they ſhall ap- oint, an account, in writing, of the ſum hich ſuch aſſeſſment of ſixpence in the pound ath raiſed, or will, in his or their opinion, iſe, within ſuch place: And if the conſta- les, &c. ſhall neglect or refuſe to make ſuch ſt; or if they ſhall not return the ſaid liſt of ames when made, and ſuch duplicate thereof, aforeſaid, and give ſuch notices, and ſerve ch warrants, as in this act is directed; or the ſaid conſtable headborough, tithing- an, and ſurveyor, or any of them, ſhall eglect to return ſuch account of the amount f ſuch aſſeſſment, when ſo required as afore- id; every conſtable, &c. ſo neglecting, ſhall,

If no ſuch liſt be made, or the perſon appointed refuſes to ſerve, another perſon may be appointed;

and a ſalary fixed,

not exceeding 1-8th part of a 6d. aſſeſſment.

Juſtices may require the conſtables, &c. to return an account, in writing, of the ſum which the aſſeſſment of 6 d. per pound will raiſe.

40s penalty on the conſtables, &c. not making or returning ſuch liſts, or not giving notices.

ſhall, for every ſuch default reſpectively, forfeit forty ſhillings.

Where the juſtices, upon ſuch refuſal, appoint another perſon, they are to appoint one ſubſtantial inhabitant for his aſſiſtant; and, on his refuſal to accept that office, he ſhall forfeit 50 s. and the juſtices appoint another, who, on refuſal, ſhall alſo forfeit 50 s. and, they may appoint a third perſon, who ſhall be intitled to the ſaid forfeitures, and to a further allowance by way of ſalary.

Sect. 2. In all caſes where the ſaid juſtices upon refuſal of the perſon ſo nominated ſurveyor to accept the ſaid office, ſhall appoint any other perſon, with a ſalary as aforeſaid, the ſaid juſtices ſhall appoint one ſubſtantial inhabitant of ſuch place, for aſſiſtant to ſuch ſurveyor, for the ſeveral purpoſes hereafter mentioned, and if the perſon ſo appointed aſſiſtant ſhall, having received notice, refuſe to accept that office, he ſhall forfeit fifty ſhillings: And ſuch juſtices may appoint another ſubſtantial inhabitant of ſuch place for aſſiſtant to ſuch ſurveyor; and if ſuch ſecond appointed aſſiſtant ſhall refuſe to accept the ſaid office, he ſhall forfeit fifty ſhillings; and the ſaid juſtices may appoint any other inhabitant, aſſiſtant to ſuch ſurveyor, who ſhall be intitled to the ſaid forfeitures before mentioned; and alſo to ſome further allowance by way of ſalary, if the ſaid juſtices ſhall think it neceſſary, and ſhall order the ſame, provided that no perſon appointed aſſiſtant for one year, ſhall be liable to be appointed within three years next following ſuch firſt appointment, without his conſent.

Bond to be given by the ſurveyor appointed with a ſalary,

Sect. 3. The ſurveyor of every place, who ſhall not reſide therein, but ſhall be appointed with ſuch ſalary, ſhall, if required by the churchwarden, overſeer of the poor, or any principal inhabitant of the place, for which he ſhall be ſo appointed ſurveyor, within fourteen days after, give a bond upon paper

without

thout ſtamp thereupon, to ſome perſon to nominated by the ſaid juſtices, with ſuf-ient ſurety, to account for the money hich ſhall come to his hands as ſurveyor; hich bond ſhall be good and effectual in w.

to account for the money which ſhall come to his hands.

Sect. 4. The aſſiſtant ſhall, to the beſt of s ſkill and judgment, aſſiſt the ſaid ſurvey-, whenever requeſted by him, in calling and attending the performance of the ſta-te duty; in collecting the compoſitions, es, penalties, and forfeitures; making and llecting the aſſeſſments; in making out d ſerving the notices authorized by this t; and in ſuch other things as ſhall be rea-nably required of him by the ſurveyor: nd ſuch aſſiſtant ſhall juſtly and truly ac-unt with, and pay to, the ſaid ſurveyor, to his order, all the money which ſhall me to his hands as aſſiſtant, by the means aforeſaid; and, in default thereof, ſhall rfeit double the value of the money by him received; and if ſuch aſſiſtant ſhall make fault in the performance of any of the duty quired from him by this act, he ſhall for-t, for every offence, not exceeding five unds, nor leſs than forty ſhillings, at the cretion of the juſtice or juſtices: And the d ſurveyor ſhall ſend orders, in writing, on the ſaid aſſiſtant, for the payment of all ns due to any perſons, for work or ma-ials, by virtue of this act, which amount forty ſhillings, or upwards; and ſuch ſur-yor ſhall not be reſponſible for any ſums of money

Duty of the aſſiſtant ſurveyor.

Forfeitures for neglect of his duty.

Surveyors to ſend orders upon the aſſiſtant for payment of all ſums amounting to 40 s. or upwards.

money which shall be received by the assist-ant, and shall not be paid to such surveyor or to his order.

If two parts out of three shall agree in the choice of a person of skill to serve the office of surveyor, and in settling his salary,

Sect. 5. Provided always, That if two parts out of three of those so to be assembled for the nomination of surveyors, shall agree in the choice of any particular person of skill and experience, to serve the said office of surveyor, and in the settling of a salary for his trouble therein, and shall return his name, together with the list herein before directed, to the justices at their said sessions to be held in the week next after the *Michaelmas* quarter sessions; that then, it shall be lawful for the said justices, to appoint such person to be surveyor for such place and allow him the salary mentioned in such agreement, which shall be raised and paid in the manner herein before mentioned; and in case any surveyor die, or become incapable of executing that office, before such next special sessions for appointing surveyors, the said justices, or any two of them, may, at some special sessions, nominate such person as they shall think proper, to execute the said office; and if such deceased surveyor had a salary they may allow the same salary to his successor, in proportion to the time he shall serve; and if the said justices at their said special sessions, or at any time afterwards, shall appoint more than one person for surveyor in any place, all persons so appointed, shall be comprehended under the word *surveyor* in every part of this act.

Justices may appoint such person, and allow him the said salary; and if any surveyor shall die, the justices may appoint another, and allow him the salary,

If more surveyors than one shall be appointed, all comprehended under the word *surveyor*.

Su

act. 6. No tree, bush, or shrub, shall be mitted to grow, in any highways within distance of fifteen feet from the centre reof, (except for ornament or shelter, to house, building, or court-yard of the er thereof), or hereafter to be planted; the same shall be cut down, grubbed up, carried away, by the owner or oc- ier of the land or soil, within ten days notice given by the said surveyors, or of them, on pain of forfeiting, ten shil- s.

No tree, &c. allowed to grow or stand within 15 feet of the centre of the high-way;

on forfeiture of 10 s. by the owners.

act. 7. The possessors of the land next ining every highway shall cut, prune, plash their hedges, and cut down or e and lop the trees growing in or near hedges or other fences, (except those s planted for ornament or shelter), in such ner that the highways shall not be pre- ced by the shade thereof; and if such pos- r shall not, within ten days after notice aforesaid, cut, prune, and plash, such ges, and cut down and lop such trees, it l be lawful for the surveyor to make plaint thereof to some justice of the limit, shall summon the possessor of the said s to appear before the justices at some ial sessions, to answer to the said com- nt; and if it shall appear to such justices, such possessor had not complied with the isites of this act, it shall be lawful for said justices, upon hearing the surveyor the possessor of such land, or his agent, in default of his appearance, upon having proof of the service of such summons), to

Hedges and trees adjoining to highways, by whom to be cut and pruned.

to order ſuch hedges to be cut, plaſhed, a pruned, and ſuch trees to be cut down, aforeſaid; and if the poſſeſſor of ſuch la ſhall not obey ſuch order, within ten da and he ſhall have had due notice thereof, ſhall forfeit two ſhillings for every twen four feet in length of ſuch hedge, which ſh be ſo neglected to be cut and plaſhed, a two ſhillings for every tree which ſhall be neglected to be cut down or pruned, a lopped; and the ſurveyor, in caſe of ſu default made by the poſſeſſor, ſhall c prune, and plaſh ſuch hedges, and cut do or prune and lop ſuch trees, in the man directed by ſuch order; and ſuch poſſe ſhall pay, over and above the ſaid penalti the expences of doing the ſame; or, in fault thereof, ſuch expences ſhall be levi together with the ſaid forfeitures, upon or her goods and chattels, by warrant from juſtice of peace.

Occupiers of lands ſhall make ſufficient drains, plats, or bridges, where cartways, &c. lead out of highways into ſuch lands:

Sect. 8. Ditches, drains, or watercour of a ſufficient depth and breadth for the ke ing all highways dry, and conveying the w ter from the ſame, ſhall be made and k open, and ſufficient trunks, tunnels, plats, bridges, ſhall be laid where any cartwa horſeways, or footways, lead out of the highways into the lands or grounds adjoi ing thereto, by the occupiers of ſuch la or grounds; and every perſon who ſhall cupy any lands adjoining to, or near ſu highway through which the water hath u to paſs from the ſaid highway, ſhall as oft as occaſion ſhall be, open, cleanſe, and ſco

ditches, watercourſes, or drains, for ſuch ter to paſs without obſtruction; and every rſon making default, after ten days notice him given by the ſaid ſurveyor, ſhall rfeit ten ſhillings.

They ſhall forfeit, for every offence, 10 s.

Sect. 9. If any perſon ſhall lay, in any ghway, any ſtone, timber, ſtraw, dung, other matter, or in making or cleanſing ditches, ſhall permit the ſoil dug out of ch ditches to remain in ſuch highway, ſo to obſtruct the ſame, for the ſpace of five ys after notice thereof; every perſon ſhall, every ſuch offence, forfeit ten ſhillings.

Perſons laying ſtone, timber, ſtraw, &c. or ſoil out of ditches, &c. ſhall, for every offence, forfeit 10 s.

Sect. 10. If any ſtone or timber, or any y, ſtraw, ſtubble, or other matter, for the king of manure, or on any other pretence, ll be laid in any highway, within the diſce of fifteen feet from the centre, and ll not, within five days after notice by the veyor, or ſome perſon aggrieved thereby, removed, it ſhall be lawful for the poſor of the lands adjacent, or any other ſon, by order from ſome juſtice of peace, remove the ſaid ſtone, timber, hay, ſtraw, ng, or other matter, and diſpoſe of the e to his and their own uſe.

Stone, timber, hay, ſtraw, &c. laid within 15 feet of the centre of the highway.

Sect. 11. If any perſon ſhall leave any ggon, cart, or other carriage, or any ugh or inſtrument of huſbandry, in any he ſaid highways, (except during ſuch ſonable time as the ſame ſhall be loading nloading, and ſtanding as near the ſide ſuch highway as conveniently may be), s to interrupt the free paſſage of any other

Obſtruction in the highways by carriages or implements of huſbandry, makes the offender forfeit 10 s.

carriage, or of his Majesty's subjects; shall forfeit ten shillings.

Surveyors duty, on taking a view of the highways, in respect of nuisances, obstructions, &c.

Sect. 12. The surveyors of the highwa shall, at all such times as they shall ju proper, view all the common highwa trunks, tunnels, plats, hedges, ditches, ban bridges, causeways, and pavements, wit the place for which they shall be appoin surveyors; and in case they shall observe nuisances, incroachments, obstructions, annoyances, they shall, as soon as con niently may be, give, or cause to be giv to any person doing or permitting the sa personal notice, or notice in writing, to left at his, her, or their usual places of abo specifying the particulars wherein such n sances, defaults, obstructions, or annoyanc consist; and if such nuisances, obstructio or annoyances, shall not be removed, the ditches, drains, gutters, and wa courses aforesaid, effectually made, scour cleansed, and opened, and such trunks, t nels, plats and bridges laid, and s hedges cut and pruned, within twenty d after such notice, the said surveyors shall authorised forthwith to remove such nuis ces, obstructions, or annoyances, and op cleanse, and scour such ditches, gutters, watercourses, and make or amend s trunks, tunnels, plats, or bridges, and cut prune such hedges; and the person so negl ing to make, or open and cleanse such ditc &c. shall forfeit, for every foot in len which shall be so neglected, one penny; the said surveyors shall be reimbursed w

If the offender does not remove such nuisance, &c. after notice, the surveyor shall do it.

expe

pences they shall be at in removing such nuisances, &c. and in making or amending ch trunks, tunnels, plats or bridges, and cutting and pruning such hedges, by the rson who ought to have done the same, er and above the said forfeiture; and if ch person shall, upon demand, refuse to y the charges and expences occasioned there-, and the said forfeiture of one penny per ot, the said surveyor shall apply to any jus-e of the peace; and, upon making oath be-re him of notice being given to the defaul-r, and of the said work being done by such rveyor, and of the expences attending it, e said surveyor shall be repaid by such per-n all such his said charges; or, in default payment, the same shall be levied in such anner as the penalties and forfeitures hereby flicted are directed.

and the offender shall pay the charges thereof.

Sect. 13. Provided that no person shall be mpelled, nor any surveyor permitted, to cut prune any hedge at any other time than be-een the last day of *September* and the last y of *March*; and that nothing herein con-ned shall extend to oblige any person to l any timber trees growing in hedges at y time whatsoever, except where the high-ys shall be ordered to be enlarged, as here-after mentioned, or to cut down or grub any oak trees growing within such high-y, or in such hedges, except in the nths of *April*, *May*, or *June*; or any ash, n, or other trees, in any other months than cember, *January*, *Feburary*, or *March*.

Times of cutting hedges,

and of felling trees, &c. growing in the highways.

Where the old ditches, gutters, or watercourses are insufficient,

Sect. 14. And where the ditches, gutt or watercourses, shall not be sufficient carry off the water which shall lie upon annoy the highways; then, and in e such case, it shall be lawful for the said veyors, by the order of any one or more the said justices, to make new ditches drains in the said lands and grounds adjo ing such highways, or in and through other lands, if it shall be necessary, for more effectually carrying off such water fr the said highways; and the said surveyo and their workmen, are hereby authorised go upon the said lands for the purposes afo said: Provided, that the said surveyors m proper trunks, tunnels, plats, bridges, arches, over such ditches, gutters, or wat courses, where the same shall be necess for the convenient use and enjoyment of lands through which the same shall be ma and, from time to time, keep the same in pair; and also make satisfaction to the occ pier of such lands which are not waste common, for the damage which he, she, they, shall sustain thereby; to be settled paid in such manner as the damages for g ting materials in several or inclosed lands hereafter directed to be settled and paid.

new ones may be made,

Cartways to market towns to be made 20 feet wide. Horseways or driftway, 8 feet wide.

Sect. 15. And the said surveyors of highways shall make, support, and maint every public cartway leading to any mar town, twenty feet wide at the least; and e public horseway or driftway, eight feet w at the least, if the ground between the fe inclosing the same will admit thereof.

ect. 16. Provided, that where it ſhall ap-
r, upon the view of any two or more of
ſaid juſtices, that the ground of any high-
y between the fences thereof is not of ſuf-
ent breadth, and may be conveniently
dened, or that the ſame cannot be conve-
ntly enlarged, and made commodious for
vellers, without diverting and turning the
he; ſuch juſtices are hereby impowered,
hin their reſpective juriſdictions, to order
h highways reſpectively to be widened, or
erted and turned, in ſuch manner as they
ll think fit, ſo that, when enlarged and
erted, they ſhall not exceed thirty feet
breadth; and that neither of the ſaid pow-
do extend to pull down any houſe or
lding, or to take away the ground of any
rden, park, paddock, court, or yard; and
the ſatisfaction of the perſon, bodies po-
ck or corporate, who are ſeiſed or poſſeſſed
or intereſted in their own right, or in
ſt for any other perſon, in the ſaid ground
t ſhall be laid into the ſaid highways re-
ctively, ſo to be enlarged, or through
ich ſuch highway, ſo to be diverted and
ned, ſhall go, the ſaid ſurveyor, under
direction, and with the approbation of
ſaid juſtices, ſhall, and is hereby impow-
d to make an agreement with him, her,
them, for the recompence to be made for
h ground, and for the making ſuch new
ches and fences as ſhall be neceſſary, ac-
rding and in proportion to their ſeveral and
ſpective intereſts therein, and alſo with any
her perſon, bodies politick or corporate,

Juſtices may order narrow roads to be widened,

or diverted and turned.

Surveyors to agree with owners of lands for recompence;

that may be injured by the enlarging, altering, or diverting ſuch highways reſpectively, for the ſatisfaction to be made to him, her, or them reſpectively, as aforeſaid: And if the ſaid ſurveyor, with the approbation of the ſaid juſtices, cannot agree with the ſaid perſon, *&c.* or if he, ſhe, or they, cannot be found, or ſhall refuſe to treat, or take ſuch ſatisfaction as ſhall be offered to them by ſuch ſurveyor; then the juſtices, at any general quarter ſeſſions, upon certificate in writing, ſigned by the juſtices making ſuch view as aforeſaid, of their procedings in the premiſes, and upon proof of fourteen days notice in writing having been given by the ſurveyor to the owner, occupier, or other perſon intereſted in ſuch ground; or to his, her, or their guardian, truſtee, clerk, or agent, ſignifying an intention to apply to ſuch quarter ſeſſions for the purpoſe of taking ſuch ground, ſhall impanel a jury of twelve diſintereſted men out of the perſons returned to ſerve as jurymen at ſuch quarter ſeſſions; and the ſaid jury ſhall, upon their oaths, to the beſt of their judgment, aſſeſs the recompence to be made, to the owners and others intereſted in the ſaid ground, for their reſpective intereſts, as they ſhall think reaſonable; not exceeding forty years purchaſe for the clear yearly value of the ground ſo laid out, and likewiſe ſuch recompence as they ſhall think reaſonable, for the making of new ditches and fences on the ſide or ſides of the ſaid highway that ſhall be ſo enlarged or diverted, and alſo ſatisfaction

and if they cannot agree,

the ſame may be aſſeſſed by a jury,

at the quarter ſeſſions.

ion to any person, &c. that may be otherwise injured by the enlarging or diverting the said highways: And upon payment or tender of the money so to be awarded and assessed to the person intitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person cannot be found, or shall refuse to accept the same, for the use of the owner of, or others interested in the said ground, the interest of the said person or persons, in the said ground, shall be for ever divested out of them, and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a publick highway, to all intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils, lying under the same, which can or may be got without breaking the surface of the said highway; and also all timber and wood growing upon such ground, to be fallen and taken by such owner or owners within one month after such order shall have been made, or in default thereof, to be fallen by the said surveyor, within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the owner or owners: And where there shall not appear sufficient money in the hands of the surveyor, for the purposes aforesaid, the said two justices, in case of agreement, or the said court of quarter sessions, after such verdict as aforesaid, shall order an equal assessment to be made, levied, and collected, upon all and every the occupiers of lands, tenements, woods,

On payment of money assessed, ground to be deemed a publick highway.

Where there is not money sufficient, assessments may be raised by order of the justices at their quarter sessions.

tithes, and hereditaments, in the respective places where such highways shall lie, and direct the money to be paid to the person or persons so interested, in such manner as the said justices, or court of quarter sessions respectively, shall appoint: And the money thereby raised shall be employed according to the direction of the said justices, or court of quarter sessions, towards the purchasing the land to enlarge or divert the said highways, and for the making the said ditches and fences, and also satisfaction for the damages sustained thereby; and the said assessment, if not paid within ten days after demand, shall, by order of the said justices, or court of quarter sessions, be levied by the said surveyor, in the manner herein-after mentioned: Provided, that no such assessment in any one year shall exceed the rate of sixpence in the pound of the yearly value of the lands, tenements, &c.

not exceeding 6 d. in the pound.

Old highway and soil may be sold by the surveyor.

Sect. 17. And when any such new highways shall be made, the old highways shall be stopped up, and the land thereof sold by the surveyor, with the approbation of the said justices, to some persons whose lands adjoin thereto, if they shall be willing to purchase the same, if not, to some other person, for the full value thereof: But if such old road shall lead to any lands, house, or place, which cannot in the opinion of such justices be accommodated with a convenient way and passage from such new highway, then, the said old highway shall be sold subject to the right of way and passage to such lands, house, or place

subject to ancient right of way and passage.

ce respectively, and the money arising erefrom shall be applied towards the purase of the land where such new highway ll be made; but all mines, minerals, and ils, lying under the same, shall continue be the property of the person who would ve been intitled to the same, if such old ghway had continued there.

Mines and minerals reserved to the owners.

Sect. 18. And in case such jury shall give in verdict for more monies, as a recompence the right, interest, or property, of any pern or persons, *&c.* than what shall have been fered by the said surveyor, before such apication to the said court of quarter sessions; en the expences attending the said several oceedings shall be paid by the surveyor of e said highway, out of the monies in his their hands, but if they shall give a verct for no more, or for less monies than shall ve been proposed by the said surveyor, then e said expences shall be paid by the person persons, who shall have refused to accept e recompence so offered as aforesaid.

Costs of proceedings by whom payable.

Sect. 19. And when it shall appear, upon e view of any two or more of the said justces, that any publick highway, not in the uation herein-before described, or publick idle-way, or foot-way, may be diverted, as to make the same nearer or more comodious to the publick, and the owner of the nds through which such new highway, idleway, or footway, is proposed to be ade, shall consent thereto, by writing under is or their hand and seal, it shall be lawful, order of such justices, at some special

Highways, bridleways, and footways, may be turned by the justices, with the consent of the owners of the lands.

ſeſſions, to divert and turn, and to ſtop ſuch footway, and to divert, turn, and ſtop up, and incloſe, ſell, and diſpoſe of ſuch old highway or bridleway, and to purchaſe the ground for ſuch new highway, bridleway, or footway, by ſuch ways and means and ſubject to ſuch exceptions and conditions as herein before mentioned with regard to highways to be widened or diverted; and where any ſuch highway, bridleway, or footway, herein laſt before deſcribed, ſhall be ordered to be ſtopped, and ſuch new highway, bridleway, or footway, appropriated in lieu thereof, it ſhall be lawful for any perſon aggrieved by any ſuch order or proceeding, or by the incloſure of any road or highway, by virtue of any inquiſition taken upon any writ of *ad quod damnum*, to make his or their complaint thereof, by appeal to the juſtices of the peace at the next general quarter ſeſſions, after ſuch order made or proceeding had, as aforeſaid, upon giving ten days notice in writing of ſuch appeal to the ſurveyor and party intereſted in ſuch incloſure, if there ſhall be ſufficient time for that purpoſe; if not, ſuch appeal may be made upon the like notice to the next ſubſequent quarter ſeſſions of the peace, which courts of quarter ſeſſions are hereby reſpectively authoriſed to hear and finally determine ſuch appeal; and if no ſuch appeal be made, or, being made, ſuch proceedings ſhall be confirmed by the ſaid court, the ſaid incloſures may be made, and the ways ſtopped, and the proceedings thereupon ſhall be binding to all perſons whatſoever; and the

Appeal may be made to the quarter ſeſſions to proceedings by writ of *ad quod damnum*, or otherwiſe.

ew highway, bridleway, or footway, ſhall e, and continue a publick highway, bridle-way, or footway; but no incloſures of ſuch ld highways or bridleway, or ſtoppage of ſuch ootway, ſhall be made, until ſuch new high-ways, bridleway, or footway, ſhall be com-leated, and ſo certified by two juſtices of the eace, which certificate ſhall be returned to he clerk of the peace, and by him inrolled mongſt the records of the ſaid court of uarter ſeſſions; but after ſuch certificate, uch old highways, &c. may be ſtopped up, nd the ſoil of ſuch old highways or bridle-way ſold, in the manner, and ſubject to the eſtrictions herein-before mentioned with re-ſpect to highways to be enlarged or diverted y virtue of this act: And where any high-way, bridleway, or footway, hath been urned above twelve months, and the ſame ave been acquieſced in, and no ſuit hath een commenced for the turning the ſame, very new highway, bridleway, or footway, et out and uſed in the place of that ſo di-erted and turned, ſhall from henceforth be he publick highway, bridleway, or footway, nd all perſons liable to the repair of any uch old highways, bridleway, or footway, o turned, or to be turned, as aforeſaid, hall be and continue liable to the repair of uch new highways, bridleway, or footway.

No ſuch incloſures to be made until the new highways, &c. ſhall be compleated,

and certificate thereof returned to the clerk of the peace.

Concerning thoſe which have been turned above 12 months and no proſecution commenced,

Sect. 20. Provided nevertheleſs, that no ommon land, lying between the fences of ny old highway to be ſtopped up by virtue f this act ſhall be incloſed; and where the

In what caſes, and in what manner, the old highways, or the lands lying between the fences ſhall be diſpoſed of.

land between ſuch fences, not being common land, ſhall, upon a medium, exceed thirty feet in breadth, and not extend to fifty feet in breadth, the ſame ſhall not be incloſed, until ſatisfaction ſhall be made to the owner, for ſo much thereof as ſhall exceed the ſaid breadth of thirty feet; and if the parties cannot agree in the ſatisfaction ſo to be made, it ſhall be adjuſted by the ſaid juſtices, or the jury, if the jury ſhall be impanelled; and if the land between the fences incloſing ſuch highways, not being common land, ſhall exceed fifty feet in breadth upon a medium, or if the ſaid old road, ſo to be turned ſhall lie through the open field or ground belonging to any particular perſon, ſuch perſon, and alſo the perſon or perſons intitled to the land between the fences on the ſide of ſuch highway, ſhall reſpectively hold and enjoy the land of ſuch old highway, and pay to the ſurveyor, for the uſe of the highways, ſo much money as ſhall be agreed upon between the parties; or if they cannot agree, ſo much as ſhall be deemed and adjudged by the ſaid juſtices, or jury, as aforeſaid, to be adequate to the purchaſe of it, eſtimating ſuch highway at thirty feet in breadth, upon an average.

When old footways are ſtopped up, and new ones laid out, in what manner the owners of the lands ſhall make and receive ſatisfaction.

Sect. 22. And where any footway ſhall be diverted through the land belonging to the ſame perſon who owned the land through which ſuch old footway lay, the ſame ſhall be deemed an exchange only, and no ſatisfaction ſhall be made, unleſs the land for ſuch new footway ſhall be of greater length an

and value, than that used for such old footway; and where the said footway shall not be turned through the lands belonging to the same person, the damage occasioned by such old footway to the lands through which it lay, if the parties interested shall not agree, shall be adjudged by two indifferent persons, one to be named by the owner of the land, and the other by the said two justices; and if the persons so nominated cannot agree, they shall chuse some third person to adjudge the same, whose determination shall be final; and the money shall be applied in making satisfaction to the owner of the land through which such new footway shall be made.

Sect. 22. And if in any parish, township, or place, where any highway shall be diverted or turned, it shall appear to the justices, that there are other highways within such place, besides that so to be turned, which may, without inconvenience to the publick, be diverted into such new highway hereby authorised to be made, and the charge of repairing such highway may be thereby saved to such parish, &c. it shall be lawful for such justices to order such highway, which shall appear to them unnecessary, to be stopped up, and the soil thereof sold, in such manner, and subject to such restrictions, as are herein-before directed concerning the highways to be stopped up.

Justices to order unnecessary highways to be stopped up.

Sect. 23. And every surveyor shall give information upon oath to the said justices, of all such highways, and of all bridges, causeways, or pavements upon such highways, as are out of repair, and ought to be repaired by

Justices, on information of surveyor, may order highways, by tenure to be repaired within a limitted time;

by any person or persons, by reason of any grant, tenure, limitation, or appointment, of any charitable gift, or otherwise howsoever; and the said justices shall limit a time for repairing the same, of which notice shall be given by the surveyor to the occupier liable to the burthen of such repairs, or to such other persons, as are chargeable with the same: and if such repairs shall not be made within the time so limited, such justices shall present such highways, bridges, *&c.* so out of repair, together with the person or persons liable thereto, at the next general quarter sessions, and the justices at such quarter sessions may direct the prosecution to be carried on at the general expence of such limit, and to be paid out of the general rates.

and if not repaired within that time, may present them.

Sect. 24. And every justice of assize, justices of the counties palatine of *Chester*, *Lancaster*, and *Durham*, and of the great sessions in *Wales*, shall have authority by this statute, upon his or their own view, and every justice of the peace, either upon his own view, or upon information upon oath to him given by any surveyor, to make presentment, at their respective assizes or great sessions, or in the open general quarter sessions, of such respective limit of any highway, causeway, or bridge, not repaired, or of any other default or offence contrary to the intent of this statute; and all defects in the repair thereof shall be presented in such jurisdiction where they lie; and that no such presentment, nor any indictment, shall be removed by *certiorari*, or otherwise, out of such jurisdiction, till such

Justices of assize and of the peace, &c to make presentments of highways, &c. out of repair.

ſuch indictment or preſentment be traverſed, and judgment thereupon given, except where the obligation of repairing the ſaid highways, *&c.* may come in queſtion; and every ſuch preſentment ſhall be as good, and of the ſame force in the law, as if the ſame had been preſented and found by the oaths of twelve men; and for every ſuch default or offence ſo preſented, the juſtices of aſſize, counties palatine, and great ſeſſions, at their reſpective courts, and the juſtices of the peace, at their general quarter ſeſſions, ſhall have authority to aſſeſs ſuch fines as to them ſhall be thought meet; ſaving to every perſon or perſons, his, her, or their lawful traverſe to the ſame preſentment, as well with reſpect to the fact of non-repair as to the duty or obligation of repairing the ſaid highways, as they might have had upon any indictment of the ſame, preſented and found by a grand jury; and the juſtices of the peace, at their quarter ſeſſions, may direct the proſecutions upon ſuch preſentments as ſhall be made at their quarter ſeſſions, to be carried on at the general expence of ſuch limit, and to be paid out of the general rates.

Sect. 25. And the ſaid juſtices at any ſpecial ſeſſions may, by writing under their hands and ſeals, order thoſe highways (not being turnpike road) which they think moſt want repair, to be firſt amended, and at what time, and how the ſame ſhall be amended.

Juſtices may order what highways ſhall be firſt repaired.

Sect. 26. And, where ſeveral highways meet, it is enacted, that the ſaid juſtices, at ſome

Direction poſts where and how to be erected.

ſome ſpecial ſeſſions, ſhall iſſue their precept to the ſurveyor for any place where ſeveral highways meet, and there is no proper direction poſt, or ſtone, already erected, requiring him to cauſe to be erected, in the moſt convenient place where ſuch ways meet, a ſtone or poſt, with inſcriptions thereon, in large legible letters, on each ſide thereof, containing the name or names of the next market town or towns, or other conſiderable places, to which the ſaid highways reſpectively lead; and alſo at the ſeveral entrances to ſuch parts of any highways as are ſubject to dangerous floods, graduated ſtones or poſts, denoting the depth of water in the deepeſt part thereof, and likewiſe ſuch direction poſts or ſtones, as the ſaid juſtices ſhall judge neceſſary, for the guiding of travellers in the ſafeſt tract through the ſaid waters; and the ſurveyor ſhall be reimburſed the expences out of the monies which ſhall be received by him, purſuant to the directions of this act; and if any ſurveyors ſhall, by the ſpace of three months after ſuch precept to him delivered, neglect to cauſe ſuch ſtones or poſts to be fixed, he ſhall forfeit twenty ſhillings.

Materials, where and in what manner to be taken by ſurveyors;

Sect. 27. And it is enacted, That it ſhall be lawful for every ſurveyor, to take and carry away ſo much of the rubbiſh or refuſe ſtones, of any quarry, lying within the pariſh, *&c.* where he ſhall be ſurveyor, (except ſuch as ſhall have been got by the ſurveyor of any turnpike road), without the licence of the owners of ſuch quarries, as they ſhall judge neceſſary, for the amendment of the

ſaid

aid highways, but not to dig ſtone in ſuch quarry without leave of the owner; and alſo hat it ſhall be lawful for every ſuch ſurveyor, or the uſe aforeſaid, in any waſte land or ommon ground, river or brook, within he pariſh, &c. for which he ſhall be ſurveyor, r within any other pariſh, townſhip, or lace, wherein gravel, ſand, chalk, ſtone, r other materials are likely to be found, (if ufficient cannot be conveniently had within he pariſh, townſhip or place, where the ame are to be employed, and ſufficient ſhall e left for the uſe of the roads in ſuch other ariſh, townſhip, or place), to ſearch for, dig, nd carry away the ſame, ſo that the ſaid urveyor doth not thereby interrupt the courſe f ſuch river or brook, or damage any build-ng, highway, or ford, nor dig or get the me out of any river or brook, within the iſtance of one hundred feet above or below ny bridge, nor within the like diſtance of ny dam or wear; and likewiſe to gather ones lying upon any lands within the pariſh place where ſuch highway ſhall be, for ch purpoſe, and to carry away ſo much of e ſaid materials as he ſhall think neceſſary be employed in the amendment of the id highways, without making any ſatisfac-on for the ſame; but ſatisfaction ſhall be ade for all damages done to the lands of any erſon by carrying away the ſame, in the anner herein-after directed for getting and rrying materials in incloſed lands; but no ch ſtones ſhall be gathered without the nſent of the occupier of ſuch lands, or a licence

without making ſatisfaction; but ſatisfaction to be made for damages done by carrying them away.

licence from a juſtice of peace, after having ſummoned ſuch occupier to come before him, and heard his reaſons for refuſing his conſent.

Not to extend to ſtones thrown up by the ſea, called *beach*.

Sect. 28. Provided always, that nothing in this act, relative to the getting of ſtones, ſhall extend to any quantity of land, (being private property), covered with ſtones thrown up by the ſea, commonly called *beach*.

If ſufficient materials cannot be found in waſte lands, &c.

the ſurveyor may take them from ſeveral or incloſed lands or grounds,

Sect. 29. And it ſhall be lawful for every ſuch ſurveyor, to ſearch for, and dig, ſand, gravel, chalk, ſtone, or other materials, if ſufficient cannot conveniently be had within waſte lands, common grounds, rivers, or brooks, in and through any of the ſeveral or incloſed lands of any perſon whomſoever within the place, where the ſame ſhall be wanted; or by licence from two juſtices of the peace, at a ſpecial ſeſſions, within any other pariſh, townſhip, or place, adjoining the highway for which ſuch materials ſhall be required, if ſuch juſtices are of opinion that ſufficient materials cannot be conveniently had in the place where ſuch highways lie, or in the waſte lands, or common grounds, rivers or brooks, of ſuch adjacent pariſh, or place, and that a ſufficient quantity of materials will be left for the uſe of the pariſh, or place, where the ſame ſhall be (ſuch lands not being a garden, yard, avenue to a houſe, lawn, park, paddock, or incloſed plantation), and to carry away ſo much of ſuch materials as the ſurveyor ſhall think neceſſary for the amendment of the ſaid highways; the ſaid ſurveyor making ſuch ſatis-

factio

action for the damage to be done, as shall be greed upon between him and the owner, ccupier, or other person interested in such ands, in the presence and with the approbaion of two or more substantial inhabitants f such parish, or place; and if they cannot gree, then such recompence shall be ascerained by order of one or more justices of the eace of the limit where such land shall lie: And where, from the want of other materials burnt clay may be substituted in the lace thereof, it shall be lawful for the surveyor to dig clay in such places as he is hereby authorised to dig chalk or gravel, and to ry the same upon the lands adjoining, and o burn the same upon any waste lands or ommon grounds, upon making such satisaction for the damages within the several nclosed lands where such clay shall be placed r carried, as herein directed with regard to ther materials: Provided, that when the wner of any such inclosed lands shall have ccasion for any such materials lying within he same, for the repair of any highway, r other roads upon his estate, and shall give otice to such surveyor that he apprehends here will not be sufficient for those purposes, and also for the use of the publick ighways; then the surveyor shall not be ermitted to dig or take such materials without the consent of such owner, or an order f two justices of the peace, after having ummoned and heard the said owner or occupier, or his steward or agent; which justices re hereby authorised to permit or restrain such

making satisfaction to the owner,

In what manner satisfaction is to be settled.

Clay may be got and burnt into materials for repairing the highways.

ſuch power, in ſuch manner as to them ſhall ſeem juſt.

Expences incurred for buying materials, making ſatisfaction for damages, &c.

Sect. 30. And whereas in ſome pariſhes, townſhips, or places, there may not be ſufficient materials for the repair of the highways within the ſame, nor within the waſte lands, common grounds, rivers, or brooks, of any other pariſh, or place, lying within a convenient diſtance from ſuch highway, by reaſon whereof the ſurveyor may be forced to buy ſuch materials, and to make recompence to the owner or occupier of incloſed lands for damage which may be done by getting and carrying thereof: And whereas no proviſion is made for raiſing a fund to reimburſe the expences thereof, and ſuch expences as the ſaid ſurveyors may incur, by erecting guide-poſts, or other poſts or ſtones, and by making or repairing ſuch trunks, tunnels, plats, bridges, or arches, as aforeſaid, and by rendering ſatisfaction for damages done to lands by the making of new ditches or drains, nor for the ſalary to be paid by ſuch pariſh, townſhip, or place, to ſuch ſurveyor as aforeſaid; be it therefore enacted, that upon application by ſuch ſurveyor to the juſtices of the peace, at their ſpecial ſeſſions, and oath made of the ſum of money which he hath *bona fide* laid out and expended, or which will be required for the purpoſes aforeſaid, the ſaid juſtices, or any two or more of them, ſhall, by warrant under their hands and ſeals, cauſe an equal aſſeſſment to be made for the purpoſes aforeſaid, upon occupiers of lands, tenements,

on application to juſtices, at a ſpecial ſeſſions, may be raiſed by an aſſeſſment,

woods,

woods, tithes, and hereditaments, within such parish, township, or place, where such money shall be so expended; and the money thereby raised shall be employed and accounted for, according to the direction of the said justices, for the purposes aforesaid; provided nevertheless, that no such assessment in any one year, shall exceed the rate of sixpence in the pound, of the yearly value of the lands, tenements, woods, tithes, and hereditaments, so to be assessed.

not exceeding 6 d. in the pound.

Sect. 31. If any surveyor, or person employed by him, shall, by reason of the digging, or getting any gravel, *&c.* for repairing any highways, make any hole in any such lands, rivers or brooks, as aforesaid, wherein such materials shall be found, such surveyor, person or persons, shall forthwith cause the same to be fenced off, and such fence supported while the said hole shall continue open, and shall, within three days after such hole shall be made, where no materials shall be found, cause the same to be filled up, levelled, and covered with the turf dug out of the same; and where any such materials shall be found, within fourteen days after having dug up sufficient, cause such hole to be filled up, sloped down, or fenced off, and so continued; and every surveyor shall, within twenty days after he shall be appointed, cause all the said holes which shall then be open, and not likely to be further useful, to be filled up or sloped down; and if they are likely to be further useful, he shall secure them by rails, or other fences, to prevent

If pits or holes are made in getting materials, the surveyor shall cause them to be filled up.

or forfeit 10s. for every neglect;

prevent accidents; and if ſuch ſurveyor, ſh neglect to fill up, ſlope down, or fence o ſuch hole, as aforeſaid, he ſhall forfeit t ſhillings for every default: And if ſuch ſu veyor ſhall neglect to fence off ſuch hol or to ſlope down the ſame, for the ſpace ſix days after he ſhall have received noti from any juſtice of the peace, or from t owner or occupier of ſuch ſeveral ground, & or any perſon having right of common wit in ſuch common or waſte lands, and ſu neglect and notice ſhall be proved upon oa before one or more of the ſaid juſtices of t peace, he ſhall forfeit not exceeding t pounds, nor leſs than forty ſhillings, to b determined by ſuch juſtice or juſtices, and be laid out in the fencing off, filling up, ſloping down, ſuch hole, and towards the r pair of the roads where the offence ſhall committed, as the ſaid juſtice or juſtices ſh direct; which forfeiture, if not forthwi paid, ſhall be levied as other forfeitures herein-after directed.

and for every neglect after notice given,

a ſum not exceeding 10 l. nor leſs than 40 s.

Materials dug for the uſe of any other parish to be removed in ſummer or hard froſt.

Sect. 32. Provided always, That no m terials, to be dug for the uſe of any oth pariſh, or place, than that wherein the ſa are found, ſhall be carried from the pla where they ſhall be ſo dug only between t firſt day of *April*, and the firſt day of *Nove ber*, or in the time of hard froſt in the wi ter ſeaſon.

Perſons damaging mills, buildings, dams, &c. by digging materials, forfeit not exceeding 5 l. nor leſs than 20 s.

Sect. 33. And that if any perſon ſhall d materials for the highways, contrary to t direction of this act, whereby any bridg mill, building, dam, highway, ford, min

tin-works, may be damaged or endan-
ed, he ſhall forfeit, not exceeding five
unds, nor leſs than twenty ſhillings, at the
cretion of the court or juſtices.

Sect. 34. The ſurveyor, together with the
habitants and occupiers of lands, *&c.* with-
each pariſh, townſhip, or place, ſhall, at
per ſeaſons in every year, uſe their endea-
urs for the repair of the highways, and
all be chargeable thereunto, as followeth;
ery perſon keeping a waggon, cart, wain,
ough, or tumbrel, and three or more horſes
beaſts of draught uſed to draw the ſame,
all be deemed to keep a team, draught, or
ough, and be liable to perform ſtatute-duty
ith the ſame, in the place where he reſides,
d ſhall, ſix days in every year, (if ſo many
all be found neceſſary), to be computed
om *Michaelmas* to *Michaelmas*, ſend on every
y, and at every place, to be appointed by
e ſurveyor, one wain, cart, or carriage,
rniſhed after the cuſtom of the country,
ith oxen, horſes, or other cattle, and all
her neceſſaries, and alſo two able men;
hich duty ſhall excuſe every ſuch perſon
om his duty in ſuch pariſh, *&c.* in reſpect
all lands, *&c.* not exceeding the annual
alue of fifty pounds, which he ſhall occupy
erein: And every perſon keeping ſuch
am, draught, or plough, and occupying
erein lands, *&c.* of the yearly value of fifty
unds, beyond the ſaid yearly value of fifty
unds, in reſpect whereof ſuch team-duty
all be performed, and every ſuch perſon
ccupying lands, *&c.* of the yearly value of
fifty

Statute-duty.

in reſpect of keeping a team or occupying lands, &c.

fifty pounds in any other parish, &c. besides that wherein he resides, and every other person not keeping a team, draught, or plough, but occupying lands, &c. of the yearly value of fifty pounds, in any parish, &c. shall, in like manner, and for the same number of days, send one wain, cart, or carriage, furnished with not less than three horses, or four oxen and one horse, or two oxen and two horses, and two able men to each wain, cart, or carriage; and, in like manner, for every fifty pounds *per annum* respectively which every such person shall further occupy, in any such parish, &c. such wains, carts, or carriages, to be employed by the surveyor in the repairing the highways within the parish, &c. where such lands, &c. shall lie; and every person who shall not keep a team, draught, or plough, but shall occupy lands, &c. under the yearly value of fifty pounds, in the parish, &c. where he resides, or in any other place, and every person keeping a team, draught, or plough, and occupying lands, &c. under the yearly value of fifty pounds, in any other parish, &c. than that wherein he resides, shall respectively contribute to the repair of the highways, and to pay to the surveyor of such parish, &c. in lieu of such duty, the sums following, *viz.* For every twenty shillings of the annual value of such lands, &c. the sum of one penny for every day's statute-duty which shall be required by the surveyor, not exceeding six days duty in the whole year, as aforesaid, and every such person shall pay the sum of

Contribution in money.

ne penny for every twenty ſhillings of the nnual value of the lands, &c. which he all occupy in any ſuch pariſh, &c. above the nnual value of fifty pounds, and leſs than ne hundred pounds, and ſo for every twenty illings that each progreſſive and intermedi- e annual value of twenty ſhillings, of the nds, &c. which he ſhall ſo occupy, ſhall fall ort of the further increaſe of fifty pounds, every pariſh, &c. where ſuch lands, &c. all lie, for every day's ſtatute-day ſo to be quired; which ſeveral ſums ſhall be conſi- red as compoſitions, and ſhall be paid to e ſurveyor, for the uſe of the highways, the time ſuch compoſitions are to be paid nder the authority of this act, or within n days after; or, in default of ſuch pay- ents, ſuch money ſhall be levied by diſtreſs d ſale, in ſuch manner as the forfeitures the neglect in performing the ſtatute-duty e hereby authoriſed to be levied: Provided, at no perſon keeping ſuch team, &c. and rforming duty as aforeſaid, in the pariſh, c. where he reſides, and not occupying nds, &c. within the ſame, of the yearly lue of thirty pounds, ſhall be obliged to d more than one labourer with ſuch team, r.

How theſe contributions in money are to be recovered.

Sect. 35. Every perſon who ſhall not keep eam, draught, or plough, but ſhall keep or more cart or carts, and one or two rſes or beaſts of draught only, ſhall be liged to perform his ſtatute-duty for the e number of days with ſuch cart or carts, horſe or horſes, or beaſts of draught,

The duty required from perſons who keep no team, but keep one or two horſes uſed to draw,

 and

and one labourer to attend each cart, or to pay for the lands, &c. which he shall occupy, according to the rate aforesaid, at the option of the surveyor; and every person who shall keep a coach, post-chaise, chair, or other wheel-carriage, and not keep a team, draught, or plough, nor occupy lands, &c. of the annual value of fifty pounds, in the parish, &c. where he shall reside, shall pay to the surveyor one shilling in respect of every such day's statute-duty, for every horse which he shall draw in any such carriage, or shall pay according to the value of the lands, &c. which he shall occupy, according to the rate aforesaid, at the option of the surveyor; and also every man inhabiting in any parish, &c. and being of the age of eighteen, and under sixty years, not chargeable in any of the respects aforesaid for lands, &c. of the yearly value of four pounds, and not being an apprentice or menial servant, nor having performed the said duty, or paid the composition for the same, in any other parish, &c. for that year, shall, by themselves, or one sufficient labourer, upon every of the said days together with the said other labourers, work in the amendment of the said highways, as they shall be directed by such surveyor; and if the said teams, &c. or any of them, shall not be thought needful by the surveyor, that every such person who should have sent a such team, &c. according to the direction aforesaid, shall, according to the notice to be given, send for every one so spared, three able men, or pay the surveyor four shillings

or who keep a coach, post chaise, &c.

Personal labour required from inhabitants, or those who occupy less than 4l. per annum.

Three men to be sent in lieu of a team, if required,

or 4s. 6d. in money.

nd ſixpence in lieu thereof; and all ſuch erſons ſhall bring with them ſuch ſhovels, pades, picks, mattocks, and other tools, as re proper for ſuch purpoſes; and ſuch per- ons and carriages ſhall perform the work o which they ſhall be appointed for eight ours each, within ſuch pariſh, &c. or in etting and carrying materials, to be em- loyed in the repair of ſuch highways. And any perſon ſending a team, ſhall not ſend ſufficient labourer beſides the driver, (except s herein-before mentioned); or if any ſuch bourer, or driver, or any other labourer, or e driver of any cart required by this act perform ſtatute duty, ſhall refuſe to work; if any driver ſhall refuſe to carry proper nd ſufficient loads; it ſhall be lawful for ch ſurveyor to diſcharge every ſuch team, rt, or labourer, and to recover from the wner the forfeiture which every ſuch per- n would have incurred, in caſe no ſuch am, cart, or labourer, had been ſent.

During what hours, and under what regulation, the duty ſhall be performed.

Sect. 36. It ſhall be lawful for the ſurvey- , where the employment for teams is of ch ſort that two horſes will be ſufficient for e cart, or where a ſtand cart with one orſe ſhall be neceſſary, to call upon any erſon liable to ſend a team, draught, or ough, who keeps one or more cart or carts, d three or more horſes, to ſend ſuch cart carts, horſe or horſes, to perform his ſta- te-duty, as the ſurveyor ſhall find moſt nvenient, and ſhall direct; and ſhall allow ery ſuch ſtand cart and one horſe as half a am, and every cart and two horſes as two-

The ſurveyor may call for part of a team where he thinks it neceſſary.

thirds of a team; and if a waggon shall be found necessary, he may require the duty to be performed with such waggon, by any person who keeps one; or the person liable to perform such duty shall forfeit such sum as the duty so required of him shall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, &c.

What notice to be given for performing the duty.

Sect. 37. Every surveyor shall give to, or cause to be left at the usual place of abode of every person liable to perform such duty four days notice at least, of the time and place upon which each of the said day's duty shall be required; and every person making default in performing such duty in the manner by this act directed, shall, for every such default in sending such wain, cart, or carriage, with such men as aforesaid, forfeit ten shillings; and for every default in sending every cart with one horse and one man three shillings; and for not sending every cart with two horses and one man, five shillings: And every person making default in sending any such labourer, or in performing such labour in the manner directed by this act, or in paying such composition-money for the same as herein mentioned, shall forfeit one shilling and sixpence; which forfeitures shall be applied for the use of the highways: And if in any parish, &c. it shall not be necessary to call forth the whole duty in any year, it shall be abated in a just and equal proportion; and the surveyor shall after default made in performance of such du

Forfeitures for every default or neglect.

Application of the forfeitures.

The surveyor to call forth the duty fairly and equally.

duty as aforesaid, proceed for the recovery of the penalties hereby inflicted, so that the same may be recovered before he makes up his accounts.

Sect. 38. Provided always, That any person liable to perform the said duty, may compound for the same, by paying to the surveyor, in the manner herein-after mentioned, such sums of money as the justices for the limit wherein such parish, *&c.* shall be, or the major part of them, at their said special sessions, to be held in the first week after *Michaelmas* quarter sessions in every year, shall declare reasonable, not exceeding six shillings, nor less than three shillings, for each team, draught, or plough, for each day; and in default of their declaring the same, the sum of four shillings and sixpence in lieu of every such day's duty for each team, draught, or plough; and for every cart and one horse or beast of draught, two shillings; and for every cart with two horses or beasts of draught, three shillings, in lieu of every day's duty; and every inhabitant liable to perform such duty, and not chargeable in any other respect, as aforesaid, may compound for the same, by paying fourpence in lieu of every such day's duty.

Persons may compound for statute-work.

Compositions fixed.

Sect. 39. Provided always, That if it shall appear to the justices, at their special sessions, that there will be difficulty in procuring the necessary carriages, or a sufficient number of labourers for the repair of the highways in any particular parish, *&c.* within their limits, without paying extravagant prices, it shall

Justices may direct the performance or labour in kind in any particular parish, &c.

ſhall be lawful for ſuch juſtices to order the team-duty hereby required, or ſo much thereof as they ſhall think fit, to be performed in kind, except in reſpect of ſuch teams as belong to perſons who do not occupy lands, &c. of the annual value of thirty pounds within the pariſh, &c. and alſo to order the labourers, liable by this act to perform or compound for ſtatute-duty, to perform ſix days labour upon ſuch highways in kind, in caſe ſo many days duty ſhall be required, upon being paid the cuſtomary wages given to labourers in ſuch pariſh, &c. deducting thereout four-pence for each day's duty ſo performed; Provided, that if part of ſuch teams or labourers only are required, it ſhall be directed by the ſaid order of the juſtices in ſome given proportion, as one half, third or fourth part; and the ſurveyor ſhall, in that caſe, at a publick veſtry for ſuch pariſh, &c. put the names of all the perſons liable to ſend ſuch teams in one hat or box, and the names of all the perſons liable to perform ſuch labour into another hat or box, and ſome inhabitant then preſent ſhall draw out ſuch number from each as ſhall be equal to the proportion ſo ordered by the ſaid juſtices, and the perſons ſo drawn ſhall perform ſuch duty in kind for that year; and that if any ſuch order ſhall be made in the ſubſequent year, the ſame method ſhall be obſerved, but the names drawn the preceding year ſhall not be put into ſuch hat or box; which order of the ſaid juſtices, ſo far as the ſame ſhall be extended, ſhall ſuperſede the ſaid power

or liberty of compounding, and shall be binding and effectual.

Sect. 40. Provided always, That if any person who shall keep a team, draught, or plough, not occupying lands, *&c.* to the value of thirty pounds *per annum*, in the parish, *&c.* where he shall reside, but shall in part maintain his horses and beasts of draught used in such team upon lands which he shall occupy in one or more adjacent parishes, it shall be lawful for the said justices, at some special sessions, to mitigate the duty or composition to be performed or paid by such person, as they shall think just.

Justices may mitigate where a person maintains his team partly from lands in another parish.

Sect. 41. Provided also, That the said surveyor shall, on some *Sunday* in *November* in every year, cause ten days notice to be given in the church or chapel of such parish, *&c.* and if there be no church or chapel, then at the most public place there, and repeat the like notice in such church, chapel, or place, on the next succeeding *Sunday*, when and where the persons permitted under the authority of this act, and inclined to compound for the said duty, in manner aforesaid, may signify to such surveyor their intention to compound; and all and every person signifying the same, who shall then, or within one calendar month afterwards, pay to such surveyor the composition allowed by this act, shall be discharged from the performance of such duty, which composition-money shall be employed for the use of the highways; and that no composition shall be permitted, unless paid at the day, or within the time aforesaid; but

Surveyors to give notice of the time and place for compounding.

How the composition money shall be paid and employed.

where the occupation of any lands, &c. shall be changed, or any new inhabitant shall come to reside in such parish, &c. after the time appointed for such composition, then the person occupying such lands, &c. or so residing in such parish, &c. shall be allowed to compound as aforesaid: Provided he pay the composition-money to the surveyor within fourteen days after he shall enter upon such lands, &c. and every occupier of any lands, &c. who intends to quit the possession within six calendar months from the time fixed for making such composition, may compound for half the duty hereby required, and the succeeding occupier may compound or perform the duty in kind for the other half; and if the surveyor shall receive from any person a composition for more duty than shall be required from the other inhabitants within the same parish, &c. for the same year, he shall repay such extraordinary composition-money to such person, so as to bring the duty to an equality amongst the inhabitants.

Persons keeping a draught or plough, and no carriage, to pay for the horses, &c. drawing them.

Sect. 42. Provided always, That in every parish, &c. where any person shall keep a draught or plough, and no carriage, he shall pay one shilling for every horse, or pair of oxen or neat cattle, used in such draught or plough, for every day's statute-duty, or pay according to the rate aforesaid for the lands, &c. which he shall occupy in such parish, &c. at the option of the surveyor.

Inhabitants may fix times when the statute-duty shall not be called forth.

Sect. 43. It shall be lawful for the inhabitants of every parish, &c. at some vestry,

or

or other publick meeting to be held purſuant to this act, to appoint three months in every year, within which no ſtatute-duty ſhall be performed; *viz.* One month in the ſpring, to be called *the ſeed month*; one month in the ſummer, for the hay harveſt; and one other month in the ſummer, for the corn harveſt: Provided that notice, in writing, be given of the times ſo appointed, to the ſurveyor of ſuch pariſh, *&c.* and alſo to the ſurveyor of every turnpike road lying within the ſame, within three days after every ſuch meeting, and fourteen days before the beginning of each of ſuch months.

Sect. 44. And whereas, by ſeveral acts of parliament concerning turnpike roads, part of the duty called *Statute-duty* may be directed to be performed on ſuch roads, that the ſeveral perſons liable thereto may have compounded for the ſame; be it therefore enacted, that in all ſuch caſes, the ſurveyor of the highways of the pariſh, *&c.* where ſuch compoſition ſhall have been made, ſhall pay to the treaſurer or ſurveyor of ſuch turnpike roads a part of the compoſition-money ſo received, to be proportioned according to the number of days duty which ſuch perſon was liable to perform on ſuch turnpike road; which money ſhall be laid out on ſuch part of the ſaid turnpike road as lies within the pariſh, *&c.* from which it was received; and if ſuch ſurveyor ſhall refuſe to pay the ſame within twenty days after he ſhall have received it, upon demand made by ſuch treaſurer or ſurveyor, the ſame may be levied upon his goods and chattels.

Where the ſurveyor receives compoſition money due to the turnpike roads, he ſhall pay it to the treaſurer,

for the uſe of the turnpike road within the pariſh, &c. where it is collected.

If the duty and the money raised shall not be sufficient, the justices may order an assessment.

Sect. 45. If upon application of the surveyor for any parish, *&c.* to the justices for the limit wherein such parish, *&c.* lieth, at their general or quarter sessions, or at some special sessions for the highways, the said justices shall be fully satisfied, by proof upon oath, that the duty directed to be performed, and the money authorised to be collected, has been performed, applied, and expended, or that the common highways, bridges, causeways, streets, or pavements, belonging to such parish, *&c.* are so far out of order that they cannot be sufficiently repaired, *&c.* by the means herein-before prescribed, (notice being first given of such intended application, at the church or chapel of such parish, *&c.* on some *Sunday* preceding such quarter or special sessions, or if the place be extraparochial, notice, in writing, being first given to some of the principal inhabitants in such extraparochial place, a week at least before such general or special sessions); then, an equal assessment upon all the occupiers of lands, *&c.* within any such parish, *&c.* shall be made by such person and persons, and allowed in such manner, as the said justices shall direct; and the money thereby raised shall be employed according to the directions of the said justices, towards the repairing, paving, cleansing, *&c.* such highways, causeways, *&c.*

But such assessment, with the other, not to exceed 9d. in the pound.

Sect. 46. Provided nevertheless, That the assessment herein last authorised, and that before authorised, for buying materials, making satisfaction for damages, erecting guide-posts, and

and paying the ſurveyor's ſalary, ſhall not in any one year, exceed nine-pence in the pound of the yearly value of the lands, *&c.* ſo to be aſſeſſed.

Sect. 47. No fine, iſſue, penalty or forfeiture, for not repairing the highways, or not appearing to any indictment or preſentment for not repairing the ſame, ſhall hereafter be returned into the court of exchequer, or other court, but ſhall be levied by and paid into the hands of ſuch perſon or perſons reſiding in or near the pariſh, *&c.* where the road ſhall lie, as the court impoſing ſuch fines, iſſues, penalties, or forfeitures, ſhall order and direct, to be applied towards the repair of ſuch highways; and the perſon ſo ordered to receive ſuch fine ſhall apply, and account for the ſame, according to the direction of ſuch court, or in default thereof forfeit double the ſum received; and if any fine, iſſue, penalty, or forfeiture, to be impoſed on any ſuch pariſh, *&c.* for not repairing the highways, or not appearing as aforeſaid, ſhall hereafter be levied on any of the inhabitants of ſuch pariſh, *&c.* then ſuch inhabitant ſhall make his complaint to the juſtices, at their ſpecial ſeſſions; and the ſaid juſtices are hereby impowered by warrant under their hands and ſeals, to cauſe a rate to be made, for the reimburſing ſuch inhabitant the monies ſo levied on him; which rate, confirmed by any two juſtices, ſhall be collected by the ſurveyor of ſuch pariſh, *&c.* and the ſurveyor ſhall, within one month after the confirming the rate aforeſaid,

Fines, penalties, and forfeitures, how to be levied and applied.

collect, and pay ſuch inhabitant the money ſo levied on him.

The ſurveyor to keep books, and enter accounts of money paid and received;

Sect. 48. The ſurveyor for every pariſh, *&c.* ſhall collect, or cauſe to be collected, the ſeveral aſſeſſments, forfeitures, penalties, ſums of money, and compoſitions, directed and allowed by virtue of this act, and ſhall keep a book or books, in which he ſhall fairly enter a juſt and fair account of all ſuch money as ſhall have come to his hands, *&c.* in reſpect of ſuch pariſh, and to whom, and on what occaſion, he ſhall have applied the ſame; and ſhall alſo enter in ſuch book or books a liſt of all ſuch ſums of money as ſhall remain due from any perſon, in reſpect of the payments, compoſitions, *&c.* to be received by virtue of this act; and he ſhall alſo enter in the ſaid book or books an account of all tools, materials, implements, *&c.* provided at the publick expence of ſuch pariſh, *&c.* and ſhall produce ſuch books, and the aſſeſſments made within that year, to the inhabitants of the ſaid pariſh, *&c.* to which they belong, at a veſtry or other publick meeting to be held for that purpoſe, within fifteen days before the ſpecial ſeſſions ſo to be held in the week next after *Michaelmas* quarter ſeſſions; that the ſaid accounts, aſſeſſments, and liſts, may be inſpected by the inhabitants of ſuch pariſh, *&c.* and he ſhall, after the ſaid books and aſſeſſments ſhall have been produced at ſuch meeting, take the ſame to ſuch juſtice for the limit wherein ſuch pariſh, *&c.* doth lie, and at ſuch time as ſhall be agreed upon at ſuch meeting, before

and alſo of all money remaining due;

alſo of all tools, materials, &c.

and ſhall produce his accounts at a veſtry meeting,

and afterwards before a juſtice of peace, who may allow them;

fore ſuch ſpecial ſeſſions, and then and there verify ſuch account, upon oath, if required; and ſuch juſtice may allow ſuch account, if he finds it juſt, or poſtpone it until ſuch ſpecial ſeſſions, if he finds cauſe for ſo doing, in which caſe it may be ſettled and allowed at ſuch ſpecial ſeſſions, after the parts objected to ſhall have been explained and verified by proper evidence, to the ſatisfaction of the juſtices; and in caſe any articles in ſuch accounts ſhall not be explained to the ſatisfaction of ſuch juſtices, they may diſallow the ſame; and whenever ſuch accounts ſhall be ſo ſettled and allowed, or diſallowed, as aforeſaid, ſuch books and aſſeſſments ſhall be tranſmitted to the churchwarden or overſeer of the poor for ſuch pariſh, *&c.* or, if the place be extraparochial, then to ſome principal inhabitant thereof, to be kept for the uſe of ſuch pariſh, townſhip, or place; and the ſaid ſurveyor ſhall forthwith deliver a duplicate of ſuch book and account, together with all ſums of money as ſhall remain in his hands, and all tools, materials, implements, and other things, to the ſucceeding ſurveyor for ſuch pariſh, *&c.* if any new ſurveyor ſhall be appointed, or retain the ſame in his hands, and account for them in his next account, if he ſhall be continued ſurveyor in the ſucceeding year; and it ſhall be lawful for the ſucceeding ſurveyor to recover and receive ſuch money which ſhall be due and owing, by all ſuch ways and means as the preceding ſurveyor could or ought to have done; and if he ſhall neglect

or they may be further examined at the ſpecial ſeſſions.

Books, materials, tools, &c. to be delivered to the ſucceeding ſurveyor.

New ſurveyor authoriſed to collect the arrears, &c.

to

The ſurveyor liable to forfeitures for neglect of duty.

to provide ſuch book or books, or to enter ſuch accounts and liſts therein, or to deliver the ſaid book or books, and ſuch duplicate thereof, and ſuch aſſeſſments, tools, materials, implements, and other things, he ſhall forfeit not exceeding five pounds, nor leſs than forty ſhillings; and if he ſhall make default in accounting for the money remaining in his hands, he ſhall forfeit double the value of the money which ſhall be adjudged by the ſaid juſtices to be in his hands; and if he ſhall die before ſuch accounts and liſts ſhall be made out, or ſuch monies, books, aſſeſſments, tools, materials, and implements, ſhall be ſo delivered and paid, his executors or adminiſtrators ſhall make out, pay, and deliver the ſame, in like manner, and under the like penalty, as ſuch ſurveyor; and every ſurveyor ſhall pay to the juſtices clerks, for the appointment and charge, one ſhilling; for the bond ſixpence; and for the account ſo to be examined, and for the oath ſo to be adminiſtered, one ſhilling; and if any perſon ſhall receive any greater fee for the buſineſs aforeſaid, he ſhall forfeit ten pounds.

If ſurveyor dies, his executors, &c. ſhall account in the ſame manner.

Fees to be paid to the juſtices clerks.

Surveyor may contract for carrying materials, at a publick meeting.

Sect. 49. In every pariſh, *&c.* where ſufficient quantity of ſtone, gravel, chalk, or other materials, cannot be provided and carried by the labourers and teams required by this act to perform ſtatute-duty within ſuch pariſh, *&c.* the ſurveyor ſhall contract for the getting and carrying thereof, (in the preſence of the ſaid aſſiſtant, if any ſuch ſhall be appointed), at a meeting to be held for that purpoſe, of which ten days notice

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writing ſhall be given, by fixing the ſame upon the door of the church or chapel of ſuch pariſh, *&c.* or if there be no church or chapel, at the moſt publick place there; which notice ſhall ſpecify the work to be done, and the time and place for letting thereof; and if any ſurveyor ſhall have any ſhare, or intereſt, directly or indirectly, in ſuch contract, or in any other contract or bargain for work or materials, on account of any of the highways, *&c.* or ſhall, upon his own account, let to hire any team, or ſell any timber, or other materials to be uſed in repairing ſuch roads, *&c.* (unleſs a licence, in writing, be firſt obtained from ſome juſtice within that limit), he ſhall forfeit for every ſuch offence, ten pounds, and be for ever after incapable of being employed as a ſurveyor with a ſalary.

If the ſurveyor has a ſhare in any contract, or ſhall let to hire any team, or ſell any timber, ſtones, &c. without licence, he ſhall forfeit 10l. and be incapable of being ſurveyor with a ſalary.

Sect. 50. If any ſurveyor ſhall neglect his duty in any thing for which no particular penalty is impoſed, he ſhall forfeit, for every ſuch offence, not exceeding five pounds, nor leſs than ten ſhillings, at the diſcretion of the juſtices.

Surveyor, for every neglect of duty, ſhall forfeit 5l. when no particular penalty is impoſed.

Sect. 51. Where any lands have been, or ſhall be given, for the maintenance of cauſeways, pavements, highways, and bridges, ſuch perſons who are, or ſhall be enfeoffed or truſted with ſuch lands, ſhall let them to farm at the moſt improved yearly value, without fine; and the juſtices in their open ſeſſions may inquire into the value of all ſuch lands given, or to be given, and order the improvement and employment of the rents and profits

Perſons enfeoffed with lands for the maintenance of cauſeways, &c. ſhall let them to farm at the moſt improved value.

profits thereof, according to the will of the donor of ſuch lands, if they find that the perſons intruſted have been negligent in the performance or truſt, (except ſuch lands have been given to any college or hall in either of the univerſities of this kingdom, which have viſitors of their own) any law, ſtatute, uſage, or cuſtom, to the contrary notwithſtanding.

Penalty on perſons damaging cauſeways, direction poſts, mile ſtones, bridges, &c.

Sect. 52. And foraſmuch as ſeveral evil-diſpoſed perſons may wilfully pull up, cut down, and remove or damage poſts, blocks and great ſtones, fixed or to be fixed, on cauſeways, *&c.* and drive carriages upon banks and cauſeways, or againſt the ſides thereof, and alſo dig or caſt down the ſaid banks, and ſuch perſons may break, damage or throw down the ſtones, bricks or wood fixed upon bridges, and may pull down, deſtroy or deface, any mile ſtone or poſt, graduated or direction poſt or ſtone, erected or to be erected upon any highway: for prevention thereof, every perſon guilty of any ſuch offence, ſhall, upon complaint made to any juſtice of the limit where the ſame ſhall be proved to be done, by the oath of any one credible witneſs, or upon view of the juſtice himſelf, forfeit any ſum not exceeding five pounds, nor leſs than ten ſhillings; and in default of payment ſhall be committed to the houſe of correction to be whipped, and kept to hard labour, not exceeding one calendar month, nor leſs than ſeven days, at the diſcretion of ſuch juſtice.

Juſtices of cities, &c. to put the act into execution.

Sect. 53. The juſtices of the peace of cities, corporations, boroughs, and other

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places, are hereby required to put in execution every part of this act within their jurisdictions.

Sect. 54. Provided always, That nothing in this act contained shall authorise any justice of the peace for any city, town corporate, or borough, to allow any salary to any surveyor to be appointed by any such justice, except such salary as shall be settled and agreed upon by two parts out of three of the persons assembled in the parish, township or place, within such city, town corporate, or borough, for which such surveyor shall be appointed.

Justices of cities or boroughs not to allow salaries to surveyors, except such as shall be agreed upon at the meeting of the householders.

Sect. 55. No waggon, having the bottom of the fellies of the wheels of the breadth of nine inches, shall be drawn with more than eight horses; and no cart, having the bottom of the fellies of the wheels of the breadth of nine inches, shall be drawn with more than five horses; and no waggon, having the bottom of the fellies of the wheels of the breadth of six inches, and rolling on each side a surface of nine inches, shall be drawn with more than seven horses; and no such waggon rolling a surface of six inches only, shall be drawn with more than six horses; and no cart, having the bottom of the fellies of the wheels of the breadth of six inches, shall be drawn with more than four horses; and no waggon having the bottom of the fellies of the wheels of less breadth than six inches, shall be drawn with more than five horses; and no cart having the bottom of the fellies of the wheels of less breadth than six inches, shall

Limitation of the number of horses for waggons and carts with different wheels.

shall be drawn with more than three horses, under the pains and penalties herein-after mentioned; (that is to say) that the owner of such waggon or cart shall forfeit five pounds, and the driver ten shillings, for every horse or beast so drawing above the number limited, to the sole use and benefit of the informer; but carriages moving upon wheels or rollers of the breadth of sixteen inches on each side thereof, with flat surfaces, are hereby allowed to be drawn with any number of horses, or other cattle.

The owner forfeits 5l. and the driver 10s. for every horse above the number.

Sixteen inch rollers not restrained in the number.

Sect. 56. Provided always, That no prosecution shall be commenced before a justice unless such information be laid within three days after the offence committed; and that no action shall be commenced for any such offence, unless within one calendar month after the offence committed; and that neither such information or action shall be laid or commenced, unless notice shall be given by the informer to the driver of such carriage on the day upon which the offence shall be committed, of an intention to complain of such offence; and if it shall appear to the justice before whom such complaint shall be made, that the offender lives so remote as to make it inconvenient to summon him to appear before such justice, he may dismiss the complaint, and leave the informer to his remedy by action at law.

Prosecutions for such additional number of horses, how to be carried on.

Sect, 57. Provided always, That it shall be lawful for the justices, at their respective general quarter sessions, to be held in the week after *Michaelmas*, to licence, in such

Justices of peace, at their Michaelmas quarter sessions, may licence an increase of horses.

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manner as they ſhall think fit, an increaſe of the number of horſes to draw in carriages up any ſteep hill, or on any road not turnpike, within their reſpective juriſdictions, if they ſhall find any additional number of horſes neceſſary; and at any *Michaelmas* quarter ſeſſions to revoke, alter, or vary the ſame, as they ſhall think fit.

Sect. 58. Provided always, That if it ſhall appear upon the oaths of credible witneſſes, to the ſatisfaction of any juſtice, or of any court of juſtice, that any waggon, cart, or carriage, could not, by reaſon of deep ſnow or ice, be drawn by the number of horſes, *&c.* then ſuch juſtice or court ſhall ſtop all proceedings before them for the recovery of any penalty incurred by drawing with too many horſes, *&c.* any thing herein contained to the contrary notwithſtanding: provided alſo, that the regulations before mentioned, concerning the number of horſes, ſhall not be conſtrued to extend to carts, waggons, or other carriages, employed only in carrying any one ſtone, block of marble, cable rope, or piece of metal, or piece of timber, or to ſuch ammunition or artillery as ſhall be for his Majeſty's ſervice; and that two oxen or horned cattle ſhall, for all the purpoſes of this act, be conſidered as one horſe.

Juſtices may ſtop proceedings for forfeiture, when, from ice or deep ſnow, more horſes were neceſſary.

Carriages excepted out of this act.

Two oxen to be conſidered as one horſe.

Sect. 59. For the better diſcovery of offenders, the owner of every waggon, wain, or cart, and alſo of every coach, poſt chaiſe, or other carriage let to hire, ſhall paint, or cauſe to be painted, upon ſome conſpicuous part of his waggon, wain, or cart, and upon the pannels

The owner's name, *&c.* to be painted on all waggons and carts, and alſo on coaches, poſt chaiſes, &c. let to hire.

pannels of the doors of all ſuch coaches, poſt chaiſes, or other carriages, before the ſame ſhall be uſed upon any publick highway, his or her chriſtian and ſurname, and the place of his or her abode, in large legible letters, and continue the ſame thereupon ſo long as ſuch waggon, &c. ſhall be uſed upon any ſuch highway; and the owner of every common ſtage waggon or cart, employed as travelling ſtages from town to town, ſhall, over and above his chriſtian and ſurname, paint, or cauſe to be painted, on the part, and in the manner aforeſaid, the following words, *common ſtage waggon*, or *cart*, as it may be; and every perſon uſing any ſuch carriage as aforeſaid upon any highway, without the names and deſcriptions painted thereon as aforeſaid, or who ſhall paint, or cauſe to be painted, any falſe or fictitious name or place of abode, on ſuch waggon, wain, cart, coach, poſt chaiſe, or other carriage, ſhall forfeit not exceeding five pounds, nor leſs than twenty ſhillings.

Drivers of carriages puniſhable for miſbehaviour, in order to prevent accidents.

Sect. 60. And whereas many accidents happen by the negligence or wilful miſbehaviour of perſons driving carriages; be it therefore enacted, That if the driver of any cart, car, dray or waggon, ſhall ride upon any ſuch carriage in any ſtreet or highway, not having ſome other perſon on foot, or on horſeback, to guide the ſame, (ſuch carriages conducted by ſome perſon holding the reins of the horſe or horſes drawing the ſame excepted;) or if the driver of any carriage on any part of any ſtreet or highway ſhall, by negligence or wilful

ul misbehaviour, cause any hurt or damage o any person or carriage passing or being pon such street or highway, or shall quit the ighway, and go on the other side the hedge r fence inclosing the same; or wilfully be at uch distance from such carriage, whilst it hall be passing upon such highway, that he annot have the government of the cattle rawing the same; or shall, by negligence r wilful misbehaviour, prevent, hinder, or nterrupt the free passage of any other carrige or of his Majesty's subjects, on the said ighways; or if the driver of any empty or nloaded waggon, cart, or other carriage, hall refuse to turn aside and make way for any oach, chariot, chaise, loaded waggon, cart, r other loaded carriage; or if any person hall drive any such coach, post chaise, or ther carriage let for hire, or waggon, wain r cart, not having the owner's name, as beore required, painted thereon, or shall refuse o discover the true christian and surname of he owner of such carriages; every such drier being convicted of any such offence, eiher by his own confession, the view of a ustice, or by the oath of one or more creible witnesses, before any justice of the eace of the limit, shall forfeit not exceeding ten shillings, if such driver shall not be he owner of such carriage; and if the offender be the owner, then not exceeding twenty hillings: and in either case, shall, in deault of payment, be committed to the house f correction, not exceeding one month, unless the same shall be sooner paid; and every such

ſuch driver, offending in either caſe, may, with or without any warrant, be apprehended by any perſon who ſhall ſee ſuch offence committed, and ſhall be immediately conveyed to a conſtable or other peace officer, to be conveyed before ſome juſtice, to be dealt with according to law: and if any ſuch driver, in any of the caſes aforeſaid, ſhall refuſe to diſcover his name, it ſhall be lawful for the juſtice before whom he ſhall be taken, or to whom any ſuch complaint ſhall be made, to commit him to the houſe of correction, not exceeding three months, or to proceed againſt him for the penalty aforeſaid, by a deſcription of his perſon and the offence, expreſſing in ſuch proceedings that he refuſed to diſcover his name.

Juſtices may hold ſpecial ſeſſions whenever they think fit,

Sect. 61. It ſhall be lawful for any two or more juſtices within their reſpective limits, whenever they ſhall judge proper, to hold any ſpecial ſeſſions, beſides that herein-before directed, for executing the purpoſes of this act, and to adjourn the ſame, as they ſhall think fit, cauſing notice to be given of the time and place of holding ſuch ſpecial ſeſſions, and of the adjournments thereof, to the ſeveral juſtices reſiding within ſuch limits, by the high conſtable, or other proper officer.

upon giving notice to the other juſtices.

Alehouſes, *&c.* not to be kept on bridges where tolls are taken.

Sect. 62. To prevent obſtructions, if any perſon collecting any tolls payable for paſſing over any publick bridge with carriages or cattle, ſhall keep any victualling-houſe, alehouſe, or other place of publick entertainment, or ſhall ſell any wine, beer, ale, cyder, ſpirituous liquors, or other ſtrong liquors

uors, by retail, being lawfully convicted y the oath of one or more credible witneſſes, r by his own confeſſion, he ſhall forfeit five ounds.

Sect. 63. If any perſon ſhall incroach, by aking, or cauſing to be made, any hedge, itch, or other fence, on any highway, not eing turnpike road, within the diſtance of ifteen feet from the centre thereof, or ſhall lough, harrow, or break up the ſoil of any and or ground, or in ploughing or harrowg the adjacent lands, ſhall turn his plough n or upon any land or ground within the iſtance of fifteen feet from the middle or entre of any highway, where the breadth of uch highway is formed and marked, or deribed with certainty, and does not exceed n breadth thirty feet, every perſon ſo offendng ſhall forfeit forty ſhillings, to ſuch perſon who ſhall make information of the ſame; nd the ſurveyor ſhall cauſe ſuch hedge, ditch, r fence, to be taken down, or filled up, at he expence of the perſon to whom the ſame hall belong: and any juſtice or juſtices of he peace of the limit ſhall, upon proof made pon oath, levy as well the expences of taking down ſuch hedges as aforeſaid, as the ſeveral penalties hereby impoſed, by diſtreſs nd ſale of the offender's goods and chattels.

Penalty for incroaching on highways.

Incroachment to be taken down by the ſurveyor.

Sect. 64. The court before whom any indictment or preſentment ſhall be tried for not repairing highways, may award coſts to the proſecutor, to be paid by the perſon ſo indicted or preſented, if it ſhall appear that the defence made to ſuch indictment, *&c.* was frivolous;

Court may award coſts to the proſecutor or defendant, upon an indictment or preſentment.

lous; or award costs to the person indicted or presented, to be paid by the prosecutor, if it shall appear that such prosecution was vexatious.

Expences for carrying on or defending prosecutions agreed upon at a vestry meeting, how to be paid.

Sect. 65. If the inhabitants of any parish, *&c.* shall agree, at a vestry or publick meeting, to prosecute any person by indictment for not repairing any highway, or for committing any nuisance, or shall agree at such vestry meeting to defend any indictment or presentment preferred against them, the surveyor of such parish, *&c.* may charge in his account the reasonable expences incurred in carrying on or defending such prosecutions; which expences shall be paid by such parish, *&c.* out of the fines, forfeitures, compositions, payments, and assessments, to be collected by virtue of this act.

The notice required for holding vestries or publick meetings.

Sect. 66. Where a vestry or publick meeting of the inhabitants of any parish, *&c.* is directed by this act, publick notice shall be given of the time and place of holding the said meeting, at the church or chapel of such parish, *&c.* on the *Sunday* next preceding such meeting, and also notice in writing, specifying the purpose of such meeting, fixed at the same time upon the door of such church or chapel, and it shall not be held till three days at least after such notice given; and if there be no church or chapel, notice of such meeting shall be given in writing, and put up at the most publick place therein, three days at least before such meeting.

Sums assessed may be levied by distress and sale of the offender's goods.

Sect. 67. If any person shall refuse to pay the sums assessed upon him, in pursu-

ce of this act, within ten days after de-
and, the same may be levied by the sur-
yor, or any other person authorised by
arrant under the hand and seal of one jus-
ce, having jurisdiction therein, by distress
d sale of the goods and chattels of the per-
n so refusing, rendering the overplus to the
wner thereof, the charges of making such
stress and sale being first deducted; and in
fault of such distress, such justice may com-
it the person so refusing to the common
ol, until he shall have paid the sum so as-
ssed, and the charges occasioned by such re-
sal.

Sect. 68. The surveyor of any parish, *&c.* all be deemed, in all cases, a competent itness, in all matters relative to the execu-on of this act, though part of his salary may ise from forfeitures, *&c.*

Surveyor may be a competent witness.

Sect. 69. No objection shall be made, or vantage taken, for want of form in any ch procedings relative to the several mat-rs, by any person or persons whomsoever.

Forms of proceedings.

Sect. 70. That the contents of this act may more generally known, the justices within eir respective limits, shall, at every special ssions to be held in the week next after the *Michaelmas* general quarter sessions, procure d deliver a printed abstract of the most ma-rial parts of this act to every surveyor, to be en appointed, as the charge hereby directed be given; and shall also, at their said spe-al sessions, to be held in the year one thou-nd seven hundred and seventy-three, deliver every of the said surveyors, one of the said

Printed abstract given to surveyors.

printed abstracts of this act, for the use of the parish, &c. for which he shall be appointed; which last-mentioned abstract the said surveyors are hereby ordered to fix on the church or chapel door, or other public place, within their liberties, on the next *Sunday* after they shall receive it; and they shall severally pay to the said justices clerk sixpence for each of the said last-mentioned printed abstracts.

One to be fixed on the church door.

Persons resisting the execution of this act, or constables refusing to obey the warrant, to forfeit not exceeding 10 l. nor less than 40 s.

Sect. 71. If any person shall resist any person employed in the due execution of this act, or make any rescue of the cattle or other goods distrained by virtue of this act; or any constable, headborough, or tythingman shall refuse to obey any warrant or precept granted by any justice pursuant to the directions of this act; and being convicted thereof by a justice of the peace, he shall forfeit not exceeding ten pounds, nor less than forty shillings, at the discretion of the justice; and if he do not forthwith pay the said forfeiture, after such conviction, such justice may commit such person to the common gaol, or house of correction, for any time not exceeding three months, or till the forfeiture shall be paid.

Forfeitures, costs, &c may be levied by distress and sale.

Sect. 72. All penalties and forfeitures by this act imposed, and all costs and charges to be allowed by this act, (the manner of levying and recovering of which is not hereby otherwise particularly directed) shall be levied by distress and sale of the goods, &c. by warrant under the hand and seal of some justice, rendering the overplus of such distress

any be) to the party, after deducting the arges of making the ſame; which warrant ch juſtice is hereby impowered to grant, on conviction of the offender, by confeſ-on, or upon the oath of one or more cre-ble witneſſes, or upon order made as afore-d; and the penalties and forfeitures ſhall paid, one half to the informer, and the her to the ſurveyor; but if the ſurveyor all be the informer, the whole ſhall be em-oyed towards the repair of ſuch highway: d if diſtreſs cannot be found, ſuch juſtice ay commit ſuch offender, or perſon liable pay the ſame, to the common gaol, or houſe correction, not exceeding three months, nleſs the ſaid penalty, forfeiture, coſts, and arges ſhall be ſooner paid; and if ſuch offen-er or perſon ſhall live out of the juriſdiction of e juſtice hereby authoriſed to grant ſuch war-nt, it ſhall and may be lawful for any juſ-ce of the limit wherein ſuch perſon ſhall in-bit, upon a true copy of the conviction hereby ſuch forfeiture or penalty was incur-d, and of the order for the payment of ſuch ſts and charges, produced and proved upon th, by warrant under his hand and ſeal, to uſe the penalty mentioned in ſuch convic-on, and the coſts and charges mentioned in ch order, to be levied by diſtreſs and ſale of e goods, &c. of ſuch offender or perſon; d if no ſufficient diſtreſs can be had, to mmit ſuch offender or perſon to the com-on gaol, or houſe of correction, for the time oreſaid.

In what manner to be applied.

How to proceed when the offender lives within another juriſdiction.

Warrant of distress when to be issued.

Sect. 73. Provided no warrant of distress unless otherwise directed by this act, shall be issued for levying any penalty, &c. until six days after the offender shall have been convicted, and an order served upon him for payment thereof.

The prosecutor has his option to proceed by information before a justice, or by action at law, if 40 s.

Sect. 74. Provided also, That every prosecutor or informer may sue for any forfeiture or penalty imposed by this act, amounting to forty shillings or upwards, (the manner of recovery thereof not being particularly directed by this act) either as herein-before directed, or by action at law, to be brought in any of his Majesty's courts of record, in manner following; (that is to say,) by action of debt, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of ———— being forfeited by an act, passed in the thirteenth year of the reign of his present Majesty, intituled, *An act to explain, amend, and reduce into one act of parliament*, &c. and if the plaintiff recovers in any such actions, he shall have double costs.

Within what time actions are to be commenced.

Sect. 75. Provided, That ten days notice in writing, be given to the party offending previous to the commencement of such action; and that the same be commenced within one calendar month after the offence committed.

Convictions how to be made.

Sect. 76. Provided also, That no conviction shall be made by virtue of this act, unless upon confession of the party accused, or the oath of one or more credible witnesses, or upon the view of a justice, in the cases before mentioned; and that any inhabitant of

an

ny parish, &c. in which any offence shall e committed contrary to this act, shall be eemed a competent witness, though an inhaitant of such parish, &c.

Inhabitant of a parish a good witness.

Sect. 77. And any justice of the peace nay administer an oath to any witness, or ther person, for the better discovery and xecution of the several matters herein-before irected.

Justices may administer oaths.

Sect. 78. Where any distress shall be nade for any sum of money to be levied by irtue of this act, it shall not be deemed unawful, nor the party making the same be eemed a trespasser, on account of any deault or want of form in any proceedings, nor shall the party or parties distraining be eemed a trespasser or trespassers *ab initio*, on ccount of any irregularity; but the person ggrieved by such irregularity may recover ull satisfaction for the special damage in an ction on the case.

Satisfaction recoverable for special damage; but distress not unlawful for want of form.

Sect. 79. Provided always, That no plainiff shall recover in any action for any irregularity, &c. if tender of sufficient amends hall be made on the behalf of the party who hall have committed any such irregularity, &c. before such action brought; and in case no such tender shall have been made, it shall e lawful for the defendant in any such action, by leave of the court where such action hall depend, at any time before issue joined, o pay into court such sum of money as he hall see fit, whereupon such proceedings or orders, and judgment, shall be had, made, nd given, in and by such court, as in other

Plaintiffs not to recover for irregularity, if tender of amends be made.

actions where the defendant is allowed to pa money into court.

Appeal may be made to quarter sessions by the person aggrieved.

Sect. 80. If any person shall think himse aggrieved by any person, in the execution the powers given by this act, for which n particular method of relief hath been appoint ed, he may appeal to the justices, at any ge neral quarter sessions, such appellant givin notice in writing, of his intention to brin such appeal, and of the matter thereof, to th justice, or other person against whom suc complaint shall be made, within six days afte the cause of such complaint arose, and withi four days after such notice, entering in recognizance before some justice within suc limit, with one sufficient surety, condition to try such appeal, and abide the order the justices at such quarter session; and eve justice, and other person, having receiv notice of such appeal, as aforesaid, sha return all proceedings whatsoever had befo them, touching the matter of such appeal, the said justices, at their general quarter se sions, on pain of forfeiting five pounds every such neglect; and the said justices such session, upon due proof of such not being given, and of the entering into su recognizance, shall finally determine the ma ters of such appeal in a summary way; a the determination of such quarter session sha be final, and no proceedings to be had in pu suance of this act shall be quashed or vacat for want of form, or removed by *certiorar* or any other writ or process, (except as her in-before mentioned,) into any of his Maj sty

Proceedings not to be quashed for want of form, nor removed by certiorari.

y's courts of record at *Westminster*, any law r statute to the contrary notwithstanding: Provided, that no such appeal shall be made nless the person convicted shall, at the time f such conviction, if he shall be then present, f not, within six days after, give notice of is intention to appeal, and at the same time nter into recognizance with sufficient sureies to pay such penalty, if such conviction hall be affirmed; and upon his giving such ecurity, the further proceeding for such penalty shall be suspended until such appeal shall e heard.

Sect. 81. If any action shall be commenced gainst any person for any thing done in pursuance of this act, such action shall be commenced within three calendar months after he fact committed: and shall be brought within the county where the fact was committed; and the defendant may plead the general issue, and give this act, and the special matter in evidence, at any trial to be had hereupon, and that the same was done in pursuance of this present act: And if the same hall appear to have been so done, or if ny such action shall be brought after the ime limited, or in any other place than as aforementioned, the jury shall find for the defendant; or if the plaintiff shall become nonsuit, or discontinue his action, after the defendant shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff, the defendant may recover treble costs, and have the like remedy for recovery

Limitation of actions.

General issue.

Treble costs.

recovery thereof, as any defendant hath in any other cases by law.

When the act commences.

Sect. 82. This act shall commence and take place, with respect to the assembling of the householders and others, and the making and delivering of lists of persons qualified to serve the office of surveyor, and the giving notices to the persons contained in such lists, upon the twenty-first day of *September*, 1773; and, with respect to all the other matters on the eleventh day of *October*, 1773.

Act 7 Geo. III. repealed.

Sect. 83. And that there may be only one law subsisting for the several purposes aforesaid, from and after the tenth day of *October*, 1773, an act, passed in the seventh year of the reign of his present Majesty, intituled, *An act to explain, amend, and reduce into one act of parliament, the several statutes, now in being for the amendment and preservation of the publick highways of this kingdom, and for other purposes therein mentioned*, (except so much thereof as repeals the several acts and parts of acts, therein mentioned, which are not revived by an act, passed in the eighth year of the reign of his present Majesty, intituled, *An act to explain, amend, and render more effectual an act, passed in the seventh year of his present Majesty's reign, intituled,* "*An act to explain, amend, and reduce into* "*one act of parliament, the several statutes* "*now in being for the amendment and pre-* "*servation of the publick highways of this* "*kingdom, and for other purposes therein men-* "*tioned,*") shall be, and the same is hereby repealed.

Sect.

Sect. 84. Provided nevertheless, That the several surveyors appointed by virtue of the act passed in the 7th year of the reign of his present Majesty, shall produce such books and lists, and pass their accounts before the justices at their respective special sessions, to be holden within their respective limits in the week next after the *Michaelmas* quarter sessions, in the year 1773, and pay the balances thereof, in such manner as they ought to have done at the special sessions, which was by the said act to have been held on the first *Monday* in *October*, or within fifteen days after; and if the justices shall appoint any surveyor or surveyors under the authority of the said act, such appointment shall be void.

Surveyors appointed under 7 Geo. III. to pass their accounts after Michaelmas next.

Sect. 85. Provided always, That nothing in this act contained shall extend to the city of *Bristol*; but that the several acts which have been passed previous to this act, relative to surveyors of the highways, and to cleansing, paving, lighting, and regulating the streets and other places within the said city, shall remain in full force.

Exceptions relative to Bristol;

Provided also, That nothing in this act shall extend to the parish of *Saint Mary Matselon*, otherwise *Whitechapel*, and *Saint John of Wapping*, in the county of *Middlesex*.

and Saint Mary Matselon, &c.

Provided always, That nothing in this act contained shall extend to alter, restrain, or abridge the powers given to the commissioners of sewers by any act whatsoever, or to vary any of the provisions thereby made, or provided; any thing herein contained to the contrary thereof in any-wise notwithstanding.

Powers of commissioners of sewers not abridged.

Lord's Day.

BY the 29 *C.* 2. *c.* 7. No drover, horse courser, waggoner, butcher, higler, or any of their servants, shall travel, or come to his inn or lodging on the Lord's Day, on pain of 20 *s.* and no tradesman, artificer, workman, labourer, or any other person, shall exercise any worldly labour or business, on the Lord's day; other than works of necessity and charity; and except dressing of meat in families, and dressing and selling of meat in inns, or cook shops, or victualling houses, for such as cannot otherwise be provided; (and by the *stat.* 9 *An. c.* 23. *s.* 20. except licensed hackney coachmen and chairmen within the bills of mortality;) on pain of every offender who is above 14 years of age, forfeiting 5 *s.* and also that no person shall publickly cry, or expose to sale, any wares, merchandizes, fruits, herbs, goods or chattels whatsoever, on the Lord's Day, (except crying and selling of milk, before nine in the morning and after four in the afternoon; and except mackarel, which may be sold on *Sundays*, before or after divine service, on pain of forfeiting the same; and no person shall employ or travel on the Lord's Day, with any boat, wherry, lighter or barge, unless allowed by a justice on extraordinary occasion; and except 40 watermen who may ply on the *Thames* on *Sundays* betwixt *Vauxhall* and *Limehouse*, (by the 11 & 12 *W. c.* 21. *s.* 13.) on pain of 5 *s.*

and

and if any person shall be convicted of any such offence in ten days after it is committed, before one justice, on view, or confession, or oath of one witness, the justice shall give warrant to the constables or churchwardens, to seize the goods so cried, and to sell the same; and to levy the other forfeitures by distress; to the use of the poor, except that the justice of the peace may out of the same, reward the informer with any sum not exceeding one third part. And for want of distress, the offender shall be set publickly in the stocks for two hours.

By the 2 *Geo.* 3. *c.* 15. It shall be lawful for fish carriages to pass on *Sundays* and holidays, either laden or returning empty. *s.* 7.

East. 32 *G.* 2. *King* and *Cox.* On an information moved for against a justice of the peace, for refusing to take an information against a baker, for exercising his trade on a *Sunday.* On shewing cause, it appeared, that the baker was not charged with baking bread, but the charge against him was for baking puddings, and pies, and other things for dinner. The court were of opinion, this was not an offence within the act; but falls within the exceptions of works of necessity and charity, and within the equity of the proviso as being a cook's shop; it being equally reasonable that the baker should bake for others, as that the cook should roast and boil for others; And it certainly is better that one baker and his men should stay at home, than many families and servants. And the rule to shew cause was discharged, with costs. *Burrow. Mansfield.* 785.

Killing game on the Lord's Day.

If any person who shall, on a Sunday take, kill, or destroy, or use any gun, dog, snare, net, or other engine for taking, killing or destroying any hare, pheasant, partridge, moor game, heath game, or grouse he shall, on being convicted thereof on the oath of one witness before one justice, forfeit any sum not exceeding 30 *l.* nor less than 20 *l.* and if not forthwith paid, it shall be levied by distress; half to the informer, and half to the poor: and for want of distress, the justice shall send the offender to the common gaol or house of correction, for any time not exceeding six calendar months, nor less than three. 10 *G.* 3. *c.* 19.

Of serving a process on the Lord's Day.

No person or persons upon the Lord's Day shall serve any writ, process, warrant, order, judgment or decree, (except in cases of treason, felony, or breach of the peace), but the service shall be void: and the person serving the same, liable to answer damages to the party grieved, as if he had done the same without any writ, process, warrant, order, judgment, or decree. 29 *C.* 2. *c.* 7. *s.* 6.

Robbery on the Lord's Day.

No hundred shall be answerable for any robbery committed on the Lord's Day: but the inhabitants shall make hue and cry after the offenders, on pain of forfeiting to the king as much as might have been recovered by the party robbed against the hundred, if he had been robbed on any other day. 29 *C.* 2. *c.* 7. *s.* 5.

Overseers

Overseers.

BY the statute of 43 *El. c.* 2. *s.* 1. It is enacted, That the churchwardens of every parish, and four, three, or two substantial householders therein, as shall be thought meet, having respect to the extent of the parish, to be nominated yearly in *Easter* week, or within on month after *Easter*, under the hand and seal of two or more justices in the same county, one whereof to be of the quorum, dwelling in or near the parish or division, shall be called overseers of the poor of the same parish.

And by the 13 & 14 *C.* 2. *c.* 12. Whereas the inhabitants of *Lancashire*, *Cheshire*, *Derbyshire*, *Yorkshire*, *Nothumberland*, the bishoprick of *Durham*, *Cumberland*, and *Westmoreland*, and many other counties in *England*, and *Wales*, on account of the largeness of the parishes, cannot reap the benefit of the act of the 43 *El.* It is therefore enacted, That all the poor, needy, impotent, and lame persons, within every township or village in the several counties aforesaid, shall be provided for, and set on work, within the several and respective township and village wherein he shall inhabit, or wherein he was last lawfully settled; and there shall be yearly chosen two or more overseers, within every of the said townships or villages respectively. *s.* 21.

In any township or place where there are no churchwardens, the overseers alone may act. When overseers act as churchwardens.

act as churchwardens and overseers may do in other places. 17 *G.* 2. *c.* 38.

If any overseer shall die, remove, or become insolvent, before the expiration of his office, two justices (on oath thereof made) may appoint another in his stead. 17 *G.* 2. *c.* 38.

And if there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5 *l.* to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress, by warrant from the sessions. 43 *El. c.* 2. *s.* 10.

The churchwardens (as before observed) were overseers of the poor long before this statute of the 43 *El.* And hereby they need no formal appointment to the office of overseer, but the statute declares them to be such.

But by a remedial clause, in the act of the 17 *G.* 2. *c.* 38. It is enacted, That the distress for the poor rate shall not be deemed unlawful, for any defect or want of form, in the warrant for the appointment of overseers. *s.* 8.

Overseers to receive books in 14 days.

The overseers being thus appointed, and taking upon them the office, shall within 14 days receive the books of assessments and of accounts, from their predecessors, and what money, *&c.* shall be in their hands, and reimburse them the arrears. 17 *G.* 2. *c.* 38. *s.* 1, 11, 13.

They, with consent of two justices, shall set poor children, &c. to work.

And by the 43 *El. c.* 2. *s.* 1, 2, 6, 11. They shall take order from time to time, with the consent of two such justices of the peace, for setting to work the children of all such

who

whose parents shall not by them, or the greater part of them, be thought able, to maintain such children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and using no ordinary trade. Such churchwardens and overseers, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices, shall meet at least once a month, in the church, on *Sunday* in the afternoon, after divine service, there to consider of some proper course to be taken, and order to be set down in the premisses; on pain that each of them absenting themselves without lawful cause, from such monthly meeting, shall forfeit for every default 20 *s.* to the poor; to be levied by one of the churchwardens and overseers, by warrant from two such justices, by distress; or in default thereof, any two such justices may commit such offender to the common gaol, there to continue without bail or main-prize, till such forfeiture shall be paid. Provided, nevertheless, that if any person shall be aggrieved by any act done by the said churchwardens, *&c.* he may appeal to the general quarter sessions, whose order therein shall bind all parties.

Churchwardens and overseers to meet once a month in the church on Sunday.

By the 2 *G.* 3. *c.* 20. It is enacted, That no person serving for himself as a private man in the militia, during the time of such service, be liable to serve as overseer of the poor.

Militia-man excused from being overseer.

By the 18 *G.* 2. *c.* 15. All freemen of the corporation of surgeons in *London*, are exempted from the office of overseer.

Freemen of surgeons company.

Sra 512. 5 Mod. 733.

A mandamus was directed to the justices of the county of *Nottingham*, reciting that within the ville of *Rufford* in the forest of *Sherwood*, there are many substantial freeholders able to contribute to the maintenance of the poor, and that there are no churchwardens or overseers to make a rate, and that there are many poor unprovided for; therefore it commands them to appoint overseers. They return, that the ville of *Rufford* is part of no parish, but time out of mind has been extra-parochial, without either church, chapel or parochial rates, and that there never were any overseers of the poor; and therefore they cannot appoint. And there having been only an obiter opinion of the court, in the case of *Dolling* and *Stokeland*, *Hill.* 11 *Ann.* that overseers of the poor might be appointed in an extraparochial place; the court directed an argument, that the case might be solemnly determined. And after argument and consideration of all the statutes relating to the poor, the court were of opinion, that the powers given by the 43 *Eliz.* to be executed in parishes, were by *stat.* 13 & 14 *Car.* 2. extended to all townships and villages whether parochial or extraparochial: that although most of the forests in *England* are extraparochial, yet they ought to maintain their own poor; and consequently overseers may be appointed; for which purpose in this case a peremptory mandamus was awarded.

Extraparochial places to provide for their poor, and appoint overseers.

Sess. Ca. vol. 2. 148. Mich. 13. Geo. 2. King and Harman.

An appointment of five overseers was thought to exceed the direction of the statute

ute; but in as much as the 13 & 14 *Car.* 2. impowers the justices of the peace, to appoint two or more indefinitely in townships or villages, and it hath been the custom in large parishes to appoint more than four, the court would not quash the appointment.

In this case there were two sets of overseers appointed, and both quashed; one, because the persons appointed were described only as principal inhabitants, instead of pursuing the words of the statute, which are substantial householders; and the other because it only called them substantial householders, without adding there, or in the parish; and this was not in the body of the appointment (as it ought to have been) but only in the direction at the foot of it.

Stra. 1261. Mich. 20. Geo. 2. case of the overseers of Weobly in Herefordshire.

Foley, 4. *East.* 13 *Geo.* 1. *King* and *Clerkenwell.* The court seemed to think an appointment of overseers on a *Sunday*, to be a good appointment; for it may be in *Easter* week, and this is the first day of the week.

On a rule to shew cause, why the appointment of overseers for the town of *Ipswich* would not be quashed, the objection was, that the justices of the peace, upon a mandamus directed to them, had appointed overseers, but that it was not within the month after *Easter*, but afterwards, and that consequently the appointment was void. But *Lee Ch. J.* As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the act itself void; for it would subject the parish to very great inconveniencies, for a thing which

Strange. 1123, Hil. 13 Geo. 2. King and Sparrow.

Appointment of overseers after Easter held good.

which is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor. The remedy is, that the justices of the peace shall appoint overseers, and that within such a time. Now the justices have neglected their duty, and have not appointed them within the proper time, and by the act have forfeited 5 *l.* but that doth not make such appointment void. Were the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute is only directory, and a penalty inflicted on the justices for not observing such directions.

A woman, though a substantial householder, ought not to be appointed overseer.

It seemeth clear that a woman (though she be a substantial householder) ought not to be appointed overseer; but the point was not directly determined. The case was as follows: A mandamus was moved for the justices of the peace, to nominate two substantial householders to be overseers of the parish of *Chardstock*, in *Dorsetshire*; and there was an affidavit, that at a meeting of the parish after *Easter* last, a man and a woman were elected overseers, and at a meeting of the justices of the peace they approved of the man, but not the woman, as being unfit to serve as overseer; and the old overseers refusing to nominate any other person, the justices approved of the man only. By *Pow*

J. A woman is not to be an overseer of the poor, and there can be no custom in a parish to put her in, because of her being an householder. And *Parker, Ch. J.* directed, that the parish should apply to the justices of the peace to have another nominated, and if they refused, to apply to the court for a mandamus. *E.* 10 *An. Vin. Tit. Poor. A.*

M. 14 *G.* 2. *K. and Jones.* A person duly appointed and chosen, was indicted for not taking upon him the office of overseer of the poor; and by the court it was held to be an offence indictable; for although the statute appoints a penalty, yet that penalty is not for refusing to take the office, but for neglect of duty in such office; and where a statute commands a thing, and mentions no penalty for disobedience, the offence is indictable as a contempt of the law. *Sess. C. V.* 2. 187. *Str.* 1146.

Overseer refusing to take the office, is indictable.

An appointment of overseers, not mentioning the justices of the peace to be of the division, was held to be good enough; for that the words in this case are only directory.

As often as overseers yield up their accounts to the justices, they shall give in the name and quality of every person that has been buried within the parish, from the time of their former account; and of such certificates as came to their hands from the parson, *&c.* of persons buried contrary to the statute 30 *Car.* 2. *c.* 3. for burying in woollen; and also of their levying the penalty of

Burials in woollen to be accounted for.

of 5 *l.* and give an account of the disposal of it, or they shall forfeit 5 *l.* And their accounts shall not be allowed till they have accounted for the burials. Affidavit is to be made in eight days, that a person was buried in woollen.

What persons may be set at work.

Overseers of the poor are to set at work all those who have no visible income to maintain themselves, or follow no trade or business to get their livelihoods; and they may with the consent of two justices set up any trade, mystery or occupation for the setting to work, and relieving the poor. *Stat.* 3 *Car. c.* 4. And any justice may send to the house of correction, *&c.* persons refusing to be employed.

Trades set up.

Overseers not obliged to disburse money.

Overseers of the poor are not obliged to disburse their own money for the relief of the poor; but if they do, a rate ought to be made to reimburse them; and they may make a rate for that purpose, and when the money is levied, pay themselves; and if the justices refuse to sign such rate, then a mandamus may be issued, requiring them to do it. 6 *Mod.* 97.

But if overseers of the poor will not disburse any thing, the justices may compel them, and make a tax for the poor themselves. *Per Windham.*

Overseers to give up their accounts four days after the end of the year.

All overseers shall within four days after the end of the year, and after other overseers are nominated, give up their accounts before two justices of the peace, of the money received by them, or what is assessed and not received; also what poor they have relieved, what stock they or the poor have

the

heir hands, and of all other things concern-
ng their office, and ſhall pay over what is in
heir hands to the new churchwardens and
verſeers of the poor. *Stat.* 43 *Eliz. c.* 2.

As overſeers and churchwardens in moſt
aſes act jointly, and as their power and duty
s exactly ſimilar in many particulars, the
eader is referred to the title **Churchwardens**
or any further information he may want
oncerning the office of overſeer: Under this
ead the ſeparate and diſtinct duty of over-
eers is given, but under the title Church-
arden, will be found thoſe articles treated
n in which they are jointly concerned. See
lſo title **Poor**.

POOR.

OVERSEERS of the poor are to meet once a month in their reſpective
riſh churches, to conſider of proper me-
ods of relieving and providing for the
oor; and every one abſenting himſelf from
ch monthly meeting, not having ſome juſt
cuſe to be allowed by two juſtices of the
ace, is to forfeit 20 *s.* for every default.

Overſeers to meet once a month.

Churchwardens ſhall alſo meet once a
onth with the overſeers, for they may be
niſhed for their neglects; from whence it
ppears that they have an equal power and
harge with the overſeers.

Churchwardens the ſame.

But no poor are to be relieved, but ſuch
hoſe names are regiſtered in a pariſh book,
kept

What poor persons to be relieved.

kept for that purpose; unless by authority under the hand and seal of a justice of the peace, (on oath made of cause and refusal of relief by overseers, &c. agreeable to 9 Geo. c. 7.) or in case of pestilential diseases, viz. the plague, or the small-pox, in respect of their families only. *Stat.* 3 & 4 *W.* & *M.* c. 11.

Poor to wear badges, &c.

Persons relieved by the parish must have on the uppermost garment, upon the shoulder of the right sleeve, a large letter P. and the first letter of the parish; otherwise one justice of the peace, upon complaint, may cause their allowance to be abridged or suspended, or commit the offenders to the house of correction for any time, not exceeding one and twenty days. *Stat.* 8 & 9 *W.* 3. c. 30.

Three sorts of poor.

There are three sorts of poor people; viz. those who are poor by impotency, (which takes in the aged, decrepit, lame, blind, distracted persons, infants, &c.) 2. Those who are become poor by casualty, (which includes persons maimed, undone by fire, over-burdened with children,) and 3. Such as have made themselves poor by rioting, idleness, drunkenness, &c.

Relieved.

The first sort, that is the poor by impotency, the overseers of the poor are to provide a necessary relief and allowance.

Employed.

The second sort of poor, which are those by casualty, if they are of ability and strength are to be set on work by the overseers, and to be further relieved by them according to their necessities.

Set at work, &c.

The third sort, are not to be relieved except in cases of great extremity, but

be ſent to the houſe of correction, and here ſet at work to maintain themſelves by hard labour. *Dalt.* 157. *&c.*

In preſent exigencies, overſeers are to provide for poor, and to give them at their diſcretion money or victuals, *&c.* And they may be reimburſed by general order of juſtices of ſeſſions. *Styl. Rep.* 246. *Keb. Rep.* 336.

Poor provided for in preſent exigencies.

Overſeers have power to rate and tax every inhabitant and occupier of houſes, lands, mines, underwoods, mines, *&c.* to raiſe money for the relief of the poor, and provide a competent ſtock of flax, hemp, *&c.* to ſet the poor on work, and alſo for the putting out poor children apprentices; which rate being allowed by two juſtices of the peace, the churchwardens and overſeers of the poor may levy the ſame by diſtreſs and ſale, and for want of diſtreſs, the party may be committed to gaol till payment. 43 *Eliz. c.* 2.

Overſeers power in making rates.

And for what purpoſes.

Every perſon, the clergy not excepted, muſt contribute to the relief of the poor. *Keb. Rep.* 251. And all things that produce an annual profit, may be taxed; tools are taxable. 3 *Keb. Rep.* 540.

Perſons and things to be taxed.

Aſſeſſments ſhould be made according to the viſible eſtate the party poſſeſſeth in the pariſh where ſuch aſſeſſment is made, and not elſewhere; the words of the act diſtinguishing a taxation on the occupiers. 2 *Bulſt.* 214.

Occupiers of lands, &c.

The aſſeſſment ſhall be in proportion to the yearly value, and not the quantity of land, and as it ariſes by reaſon of the land in the pariſh, the farmer, or renter is to pay it,

According to the yearly value.

it, and not the landlord; and the landlord never assessed for his rent.

Personal estate taxed.

An assessment is either upon lands or goods but a farmer being assessed for the land occupies, shall not for his stock on that land necessary for manure, nor the profits of which he has already been taxed; but for other stock he is taxable. And a clothier, having an estate in lands, and a great stock of wares, may be taxed for both. *Blackerby Cases* 203, &c.

Taxing of villages, &c.

Overseers of a reputed parish, though be really no parish, may make rates for the poor, and distrain for the non-payment them. *Cro. Car.* 92. And the inhabitants of a village, having a chapel and parochial rights, shall not be taxed to the poor of rectory. *Roll. Rep.* 160. Contra, if no rochial rights.

Parish in two counties.

If a parish extends itself into two counties or liberties, the overseers of the poor are act in the whole parish, and not divide themselves; but the justices of the peace shall intermeddle with that part which lies out their jurisdiction. *Ventr.* 350.

Where parish is in two counties.

But if there shall be a churchwarden several overseers of the poor, some for of the parish in one county, and others the other part in the other county, and rates are several, and accounts separate, shall be taken as distinct parishes; the of St. *Botolph without Aldersgate*, lying part *London*, and part in *Middlesex*. *Raym* 47

Power of justices in taxation.

When any parish is not able to main its own poor, two justices of the peace

any other parish within the hundred; and ſeſſions have power to tax the whole nty. *Stat.* 43 *Eliz.*

The hundred or county.

But when the cauſe of taxation of other iſhes, for inability of thoſe wherein the r are reſident, ceaſes, the tax ſhall alſo ſe; and the contribution leſſen, as there l be occaſion. *Mod.* 374. *Lit. Rep.* 73.

The juſtices of the peace may tax parti- r perſons, and need not aſſeſs the whole ſh, which is to contribute to the poor of her pariſh. 2 *Bulſtr.* 352.

Particular perſons.

Churchwardens and overſeers of the poor, ther perſons having the care of the poor very pariſh, townſhip or place, ſhall give ic notice in the church of every rate for relief of the poor, allowed by the juſti- f peace, the next *Sunday* after the ſame have been ſo allowed; and no rate ſhall eſteemed valid and ſufficient, unleſs ſuch e ſhall have been given. *Stat.* 17 *G.* 2. § 1.

Publick notice to be given of rates.

he inhabitants of the pariſh may inſpect ates, paying 1 *s.* and have copies of them, ny part of them, paying 6 *d.* for any ty-four names. 17 *G.* 2. *c.* 3. *ſ.* 2.

The inhabitants may inſpect and have copies.

urchwardens or overſeers, *&c.* refuſing inſpection, or to give copies, forfeit to arty aggrieved 20 *l.* to be recovered by of debt, *&c. id.*

Penalty.

Com. } A rate and aſſeſſment made this s, ſſ. } day, *&c.* on the inhabitants parish of *A.* aforeſaid, for and towards ief of the poor there; for the year, *&c.* eing the firſt, or ſecond farther rate for

The form of a rate or aſſeſſment for the poor.

relief of the poor of the ſaid pariſh, for the year 1774, at 1*s.* in the pound.

		£.	s.	d.
A. B. Clothier,	-	0	15	6
C. D. Yeoman,	-	0	5	6
E. F. Malſter,	-	0	17	6
G. H. Yeoman,	-	0	16	0

A. B. Churchwarden.
C. D. } Overſeers.
E. F. &c. }

We whoſe names are hereunto ſubſcribed being inhabitants of the pariſh of *A.* aforeſaid, have peruſed the above rate and aſſeſſment, and do hereby declare, that the ſeveral ſums above mentioned are, by our approbation, rated upon the reſpective perſons concerned; and that the ſame is an equal rate according to the beſt of our judgments.

A. B. }
C. D. } Pariſhioners.
E. F. }

Memorandum, this day, *&c.* the above rate and aſſeſſment was ratified and allowed by us, two of his majeſty's juſtices of the peace for the county aforeſaid.

T. O.
L. C.

Weſtminſt. ſſ A rate or aſſeſſment of [illegible] ſhilling in the pound, made the day, *&c.* being *Eaſter Tueſday* in the year of our Lord 17[illegible] for and towards the relief of the poor of the pariſh of, *&c.* in the liberty of the city of *Weſtminſter* aforeſaid, and county of *Middleſex* for the ſaid year 1774, by the churchwardens and overſeers of the poor of the pa[illegible]

rish, by and with the assent of two of his ajesty's justices of peace, for the said city d liberty, (of whom one is of the quorum) cording to the statute in that case made d provided.

A. B. Churchwarden.

S. T. } Overseers of the poor.
B. C. }

If there be a select vestry, me of them, and such of the cient inhabitants as are pre- nt at making the rate, sign re, } Inhabitants.

The above should be inserted in the first ge of the collecting book.

After which begin a new leaf, in this man- r:

Rents.	Inhabitants names.	Rates.
£. s. d.		£. s. d.
80 00 0	- *A. B.* Esq; -	2 00 0
[illegible]	- Mr. *C. D.* -	1 17 0
50 00 0	- Mr. *E. F.* -	1 5 0 &c.

Agreeable to this method, set down the mes of the several parishioners, the rents ey pay, and the sums they are assessed, ac- rding to the rate; and then beginning a w page, you make a summary account of e rents and rates.

When the rate is confirmed, if any per- n shall refuse to pay, &c. it may be levied warrant from two justices of the peace by tress; and if distress cannot be taken, two tices may commit the person refusing, till yment. Rates to be levied by distress.

Poor's rates how often to be made by statute.

It has been determined, that by the statute the poor's rates ought to be assessed monthly, and not quarterly, &c. for otherwise a man cannot remove in the middle of a quarter, without being twice rated; nor can a distress be taken by a general warrant made at the time of the rate, but there must be a special warrant; neither can it be taken for a quarter before it is ended, if the custom is to rate quarterly. 2 *Salk.* 332.

Relief against rates in the quarter sessions.

The justices at quarter-sessions will relieve those who are aggrieved by these rates or taxes. The churchwardens and overseers made a rate for the relief of the poor, which was confirmed by two justices; but the whole was rated upon the real estates of the inhabitants, and none on the personal; therefore an appeal was brought to the quarter sessions, where the rate was quashed, and the overseers, &c. ordered to make a new rate upon the real and personal estates. *Salk.* 483.

Old rates vacated, and new ordered.

Overseers to deliver an account to their successors.

The churchwardens and overseers of the poor, within fourteen days after other overseers shall be appointed to succeed them, shall deliver to the succeeding overseers a true account, signed by them, of all sums received or rated and not received, and of all goods, &c. in their hands, and of all things relating to their office, and pay and deliver over all sums and goods, &c. The account to be verified by oath before a justice of the peace. Parishioners paying 6 *d.* may inspect the account, and paying 6 *d.* for every three hundred

ed words, may have copies. *Stat.* 17 *G.* *c.* 38. §. 1.

When an overseer dies or removes out of e parish, two justices of the peace may point another in his stead. *s.* 3. When overseer dies, his executors, *&c.* shall thin forty days deliver over all things ncerning his office to some churchwarden other overseer, and pay out of his assets hat was due from him before payment of y other debt. *s.* 3.

Overseers dying or removing.

The goods of any person assessed and re- ing to pay may be levied in any place in e same county; and if sufficient distress nnot be found there, then on oath before a tice of the peace of any other county, they y be levied in that county. *s.* 7.

Distress for rates may be levied in another county.

The overseers who shall succeed, shall y arrears, and reimburse their predecessors at they have expended for the use of the or. *s.* 11.

Overseers to reimburse their predecessors.

Any person occupying any house, *&c.* out which any other person assessed has re- ved, or which at the time of making of rate was empty, every person so remov- , and the person so coming into the same, ll pay to such rate in proportion to the e he occupied the same, under the like alties of distress, as if he had not re- ved, or been originally rated; the pro- tion, in case of dispute, to be ascertained two justices of the peace. *s.* 12.

Persons occupying a house, out of which any person has removed, or that was empty when rated.

There shall be copies of all rates entered in ook, to which all persons assessed, or liable e assessed, may freely resort. *s.* 13.

Rates to be entered in a book and inspected by, &c.

Parents to relieve children, &c.

Every father, grand-father, mother an grand-mother, and husband of the grand mother (being able) are to maintain and re lieve their children, which are deemed im potent poor, as the sessions shall order; un der the penalty of 20 *s.* per month. 43 *Eliz. c.* 2.

But if the husband of the grand-moth hath no means or advancement in marria with her, he shall not be obliged to keep t child. 2 *Bulstr.* 345, 347.

A fortune in marriage with a grandmother.

The husband's having ability, or his bei of ability after marriage, will not make hi liable to the maintenance of a poor gran child, unless the grand-mother had ability su ficient; but if after marriage, lands descend such grand-mother, and the husband enjo them in her right, he shall be bound to ke the child.

Father.

A father has been ordered to allow mai tenance to the son's wife, he being beyo sea; and a father-in-law has been adjud within the meaning of the act 43 *Eliz.* S *Rep.* 283.

Children of ability to maintain parents.

The children of poor, old, impotent p sons, are at their own charges to relieve a maintain, (in the same manner as parents to relieve their children) if such children able, under the penalty of 20 *s.* per mo to be levied by distress and sale, *&c.* 43 *E c.* 2.

Churchwardens, &c. to examine the register of the poor; and alter lists, &c.

The better to relieve poor impotent p sons, and to prevent imposition of chur wardens and overseers, the parishioners every parish are yearly in *Easter* week, o

ften as it ſhall be thought proper, to meet nd examine the regiſter book of the poor; nd the reaſons of their taking relief. *&c.* nd to alter the liſts as they ſhall think proper. 3 *&* 4 *W. & M. c.* 11.

Persons exempted from wearing badges.

Thoſe who receive relief are to wear badges, as before obſerved; except ſuch child as hall be permitted to live at home, to take are of an impotent and helpleſs parent. This tatute was made to prevent miſapplying money raiſed for the poor, on idle beggars. 8 *&* 9 *W.* 3.

Cottages for the poor, on the waſte.

Churchwardens and overſeers of the poor, with the leave of the lord of the manor, in writing under hand and ſeal, or according to ny order ſet down by juſtices of the peace in heir general quarter ſeſſions, may build cottages at the general charge of the pariſh, *&c.* on the waſte, for habitations of poor impotent perſons; and place inmates or more families than one in a cottage. 43 *Eliz. c.* 2.

Taxes for erecting them.

The money to be expended in building hese cottages, at the public charge of the pariſh, may be raiſed by a rate or tax, as before directed.

Apprentice ſerves his maſter, though to a perſon in another parish, thereby gains a ſettlement.

1 *Seſſ. Ca. vol.* 2. *caſe* 138. 2 *Str.* 1001. *Mich.* 8 *G.* 2. The king againſt the inhabitants of St. *George Hanover-Square.* Upon he appeal of St. *George's* againſt an order of two juſtices of the peace, whereby *Alice Wheeler*, a ſingle woman, who was likely to become chargeable to the pariſh of St. *James's Weſtminſter*, was removed from thence to St. *George's* pariſh, as the place of her laſt legal ſettlement; and the ſeſſions ſtate the matter ſpecially, that the ſaid *A. W.* was bound by

indenture a parish apprentice in the said p rish of St. *George*, to *George Lester*, where s lived and gained a settlement, by serving t space of forty days und r the said indenture and that afterwards, and during the time her apprenticeship she was by parol agre ment, hired out by her said master *Geo Lester*, to one *J. Hall*, in the parish of S *Mary le Bone*, and there lived and lodg above forty days, *viz.* for the space of o year and upwards. That the said *Geo Lester*, her master, received her wages fro the said *J. H.* and found her clothes: O debate the question was, whether the sa *A. W.* by her residence above forty days i St. *Mary le Bone*, gained a settlement in th parish or not? The sessions held the last se vice gained her no settlement, and consequen ly she was settled at St. *George's*. But the cou quashed the order, and were of opinio that there was no difference between th master's hiring her out, and her own act and that it was like the case of a binding t *A.* and serving *B.* where it hath been alwa held to be a settlement in *B*'s parish. An the order of sessions was quashed.

A. is bound to *B.* and serves *C.* his settlement is in *C*'s. parish.

Upon a special order of sessions the ca was stated, that an apprentice was bound t *A.* in one parish, but by agreement serve *B.* in another parish, and the sessions sett him with *B.* and by the court, he gains settlement in the last place. For a perso may serve his master in another parish, an although he serves another man, yet it is b consent of his master, and the benefit ac

cru

rues to his master. *Stran.* 554. Cases of *S.* 53. *Trin.* 9 *Geo.* 1.

Parker chief justice delivered the resolution f the court. This is an order for the removal f one *Terrer*, from the parish of *Holy Trinity* to *oreditch*: by which it appears, that *Terrer* as bound apprentice to one *Truby*, with in-nt that he should serve *Green*; which he did r the space of three years. And it has en said, that he being bound to *Truby*, who es in *Trinity* parish, his settlement is there, d not in *Shoreditch*, where the service was. ut we are of opinion, the justices of the ace have done right in sending him to *oreditch*, where the service actually was. is exactly the same thing as if *Truby* had rned him over to *Green*, in which case there uld have been no question, but he had ined a settlement in *Green's* parish. If the ster removes out of one parish into ano-r, the apprentice gains a settlement if he es there forty days. The turning over an prentice is like the assigning any deed. In s case *Turby* was only a trustee. There is material difference between apprentices and er servants; for apprentices are not pre-ned to become chargeable, because the de and mystery they learn is their estate. erefore the order must be confirmed. *Stra.* *Mich.* 3 *Geo.* 1. Parishes of *Holy Trinity* d *Shoreditch*.

A. who was bound apprentice in one pa-h, and by agreement served in another, his lement was by an order of justices of peace, udged to be in the last parish. This order

Where apprentice is bound in one parish and serves in another.

was removed, and moved to be quashed these reasons. The stat. 3 *Will. & Mary* 11. restrains the privilege of gaining a settlement to the being actually bound an apprentice, and in the last parish there was binding, consequently no settlement could gained there. By a bare agreement the prentice could not be turned over so as to g a settlement in the last parish; for by the tom of *London*, the turning over must be fore the chamberlain of *London*, otherwi is not binding; and the bare verbal ag ment between the master and apprentice not sufficient within the statute. 2 *Salk.* and the act must intend a service with person only to whom the apprentice bound. By the court; the settlement in latter place is good: if a master assigns his apprentice, and the apprentice serve pursuance of that assignment, he thereby g a settlement; and the apprentice in the sent case, whilst he is with his second ma is in effect serving the first; for he serve pursuance of the first contract, and it continuance of his apprenticeship. Mr. tice *Eyre:* An apprentice's settlement is w the apprenticeship expires; and it differ whether he serves with one master or anot for still he serves by virtue of the first in ture. Mr. Justice *Fortescue:* The settle in the latter place is well gained, not a apprentice, but as a servant to the se master.

Apprentices assigned gains a settlement.

It was stated upon a special order, th apprentice on the death of his master,

Apprentice assigned by a master's widow gains a settlement.

ith his own consent turned over by the wi-
ow (who had taken no administration) to
nother master whom he served. And the
ourt held it a good settlement in the last pa-
ish, as in the case of *Holy Trinity* and *Shore-
itch*, where *A.* was bound to *B.* but served
. all the while in another parish, and there
ained a settlement.

Trin. 10. *G.* 1. Upon a special order, ating that *A.* was bound apprentice to *B.* nd served five years in the parish of St. *John*, ut had always lain in the parish of St. *James* ith his father, the sessions adjudge it a set-ement in St. *John's*. And by the court: he order must be quashed; the serving ithout lying makes no inhabitation, which necessary to gain a settlement in the case f an apprentice: and so it was held in the ase of St. *Olave Jewry*, and in the case of t. *Mary Colechurch*.

Apprentice settled where he lies.

A. is bound to *B.* a cobler, having a stall one parish, he lies in another, and the boy a third; the sessions adjudged the settle-ent where the stall is, because the service there. By the court: The boy has gained o settlement in either of the three parishes; r the stall is not sufficient to give him one, e master lying in another parish. Order uashed. *Stra.* 51. *East.* 3 *Geo.* 1. The ing and the inhabitants of St. *Olave's Jewry*.

A cobler's stall will not gain a settlement.

The case was stated upon a special order sessions for the opinion of the court. That the year 1702, *Richard Plower*, was bound prentice to *John Emerton*, who was legally tled in *Ivinghoe*; that he served part of his time;

Apprentice living forty days in a parish, to which the master goes, gains a settlement.

time, when the maſter went with all hi family as a certificate-man to *Stone-bridge* where he parchaſed an eſtate of the value o 60*l.* and the apprentice lived with him ſix months after ſuch purchaſe, till the apprenticeſhip expired; and as the ſtatute 12 *Ann. c.* 18. provides, that the apprentice of a certificate-man ſhall gain no ſettlement in th pariſh to which the maſter goes by certificate therefore the judges adjudge the ſettlement *Ivinghoe*, where the binding and great part o the ſervice was. And by the court, the ord muſt be quaſhed; for as the apprenticeſhi expired in 1709, the ſtatute 12 *Ann.* is o of the caſe, not being made with any r troſpect; and then the caſe is no more, th that an apprentice of a certificate-man liv forty days in *Stone-bridge*, which before th ſtatute was enough to gain him a ſettleme But had this been a caſe ſince the ſt tute of 12 *Ann.* yet we think the ſettleme would lie in *Stone-bridge*, for according to t caſe of *Burclear* and *Eaſtwoodhay*, *Eaſt.* 5 1. in *B. R.* when a ceatificate-man make purchaſe, he immediately ceaſes to be there the nature of a certificate-man, and becom a ſettled inhabitant; ſo that laying the ſ tute out of the caſe, in this view here is ſervice for ſix months as an apprentice, i pariſh where the maſter was legally ſettl which is more than ſufficient to give a ſett ment to the apprentice. *Stra.* 265. *Hil Geo.* 1. the pariſhes of *Ivinghoe* and *Stone-bri*

Forty days inhabitation of, need not be all together.

It having been ſtated, that an apprent was bound in the pariſh of *A.* and lived th

off and on for three quarters of a year. Exception was taken, that this was no settlement, since he might not inhabit forty days together. But by the court: that is not necessary, and the order for making it a settlement was confirmed. *Stran.* 579. The king and the inhabitants of *Cirencester*.

Where the duty on apprentices is not paid, the apprentice gains no settlement.

It was stated upon a special order of settlement that a poor boy was bound apprentice by indenture, and the master had 20 *s.* paid him; that he served three years; but the master had never paid the duty of 6 *d.* in the pound according to 8 *Ann. c.* 9. which says, that if the duty be not paid, the indenture shall be void. The case was referred to *Fortescue* justice, who went the circuit. He held it a settlement, because the master had six months to pay the duty in, so that during those six months a settlement was gained: and it should not be in the power of the master to defeat it by matter *ex post facto*. And agreeable to his opinion, the sessions held it a settlement. But upon debate in *B. R.* the order was quashed; for they said it was making the indenture good to a particular purpose, when the act of parliament had made it void to all intents and purposes whatsoever. So the order was quashed. *Str.* 903 *East.* 4 *Geo.* 2. Between the parishes of *Currenden* and *Laland*.

How to order women delivered of children in the streets.

Whereas women wandering and begging are often delivered of children in parishes to which they do not belong, whereby they become chargeable to such parish: Be it enacted, That where any such women shall be

so

ſo delivered, and become chargeable, it ſhall be lawful for the churchwardens and overſeers of ſuch pariſh, to detain ſuch woman in their cuſtody, until they can ſafely convey her to ſome juſtice, who ſhall examine her and commit her to the houſe of correction, until the next general or quarter ſeſſions, who may (if they think proper) order her to be publickly whipped, and detained in the houſe of correction, not exceeding ſix months; and upon application by the churchwardens or overſeers where ſhe was ſo delivered, the juſtices at ſuch ſeſſions ſhall order the treaſurer of the county or diſtrict to pay them ſuch ſum of money, as ſhall be adjudged a reaſonable ſatisfaction for the charges ſuch place has been put to on ſuch woman's account; and if ſuch woman ſhall be detained and conveyed to a juſtice of the peace, as aforeſaid, the child of which ſhe is delivered, if a baſtard, ſhall not be ſettled in the place where ſo born, nor be ſent thither for want of other ſettlement, by a paſs, by virtue of this act, but the ſettlement of ſuch woman ſhall be deemed the ſettlement of ſuch her child. 17 *G.* 2. *c.* 5. *ſ.* 25.

Baſtard ſettled where born; but if born in *A.* pending an order of removal, it is no ſettlement in *A.*

A woman, an inhabitant of *Icleford*, being with child of a baſtard, goes to *Great Milton* to get ſome neceſſaries from her relations; the officers of *Great Milton* procure an order from two juſtices of the peace to ſend her to *Icleford*; ſhe is brought to bed at *Great Milton*. It was held by the court, that though in general a baſtard is ſettled where it is born, yet in this caſe where there is an order

order to remove the mother before ſhe is delivered, the child ſhall be an inhabitant of *Icleford*. If a woman with child of a baſtard is ſent by order from *A.* to *B.* ſhe is brought to bed at *B.* then the order is quaſhed; the child ſhall be ſent back to *A.* with its mother. *Seſſ. Ca. vol.* 1. 33. *Mich.* 10. *Ann.*

Baſtard of a certificate-man ſettled, where born.

A man named *John Piſſey*, being legally ſettled in the pariſh of *White Waltham*, where he had lived two years with a woman who was reputed to be his wife, went with a certificate from *White Waltham*, owning them as man and wife, into the pariſh of *New Windſor*, where they had ſix children. The man dies, and the woman ſwearing they had never been married, the juſtices adjudge the children to be baſtards, and ſettled in *New Windſor*, where they were born. A motion was made to quaſh the order, becauſe the evidence of the mother ought not to be admitted, and becauſe the certificate was concluſive to the pariſh of *White Waltham*, to ſay they were not man and wife. For as no pariſh can refuſe a certificate-man, ſo whatever is the import of that certificate muſt be binding, or it would be hard to get rid of ſuch people. *Yorke, Contra.* It is a rule, that baſtards are ſettled where born; and I believe it will not be pretended, that the baſtard of a certificate-man can be ſent back with him. But the only queſtion will be, whether the legitimacy of the marriage could come in queſtion at the ſeſſions. As to the exception about the mother's evidence, I take it not to be material in this court, what evidence the ſeſſions went upon

upon. If the juſtices give an insufficient reaſon for their adjudication, that is no ground to quaſh the order: Their adjudication that ſuch a place is the place of the laſt legal ſettlement, is concluſive to this court, though they ſhew in the face of the order an act which in law will not gain a ſettlement: for they, and they only, are judges of the fact, and this court only declares the law arising from that fact. If a jury finds not only the fact, but the evidence of it; yet you put the evidence out of the caſe, and adjudge upon the fact only. The mother's evidence is good; for ſhe is a ſtranger *quoad* the pariſh. *Salk.* 478. As to the certificate, that cannot enure by eſtopel as a deed. The ſeſſions are *quaſi* a jury, and not bound by eſtopels. 4 *Co.* 53. 6 *Salk.* 276. Adjournatur; and the laſt day of the term the chief juſtice delivered the opinion of the court. Chief juſtice: We are all of opinion, that the certificate is concluſive to the pariſh of *White Waltham*, and they are not to be admitted to diſpute the validity of the marriage, therefore the ſix children being actually chargeable to *New Windſor*, muſt be ſent back to *White Waltham*. There is no doubt but the baſtard of a certificate-man is ſettled in the place of his birth; for he is not ſuch an iſſue as will follow the ſettlement of his father or mother, neither is he, his or her child within the intention of the ſtatute, ſo as to be ſent back with the parent. *Stra.* 186. *Trin.* 5 *Geo.* 1. The pariſhes of *New Windſor* and *White Waltham*.

Quæ

Queen against the parish of St. Giles's, sess. *a. vol.* 1. 18. Justices make an order o send an infant from the parish of *R.* to the arish of St. *Giles*; because it appears that otwithstanding the father was last settled at R. yet the child was born at St. *Giles*'s. This rder was confirmed at the sessions, but now uashed; for the place of the settlement of he child is with the father, and not the place here the child was born; but if it cannot ppear where the father was settled, the place f its birth shall be the place of settlement.

Birth only gives settlement to a child legitimate, where the father's settlement is not known.

Hill. 10 *Geo.* 1. St. *Giles* and *Blackwater.* was stated upon a special order, that *William Chesterman* was born in St. *Giles*'s, and nt apprentice to *Eversly Blackwater*, where e served two years, till his master failed; at he then returned to St *Giles*'s, where he ed four years, and married a wife by whom had two children, and died; that during e last four years he never lived in *Eversly lackwater*; but as to the children, the court re divided; the chief justice and *Powys* stice inclining, that, having never been moved during the life of the father, they ere settled in St. *Giles*'s, the place of their th. But *Eyre* and *Fortescue* justices, thought settlement to be in *Eversly Blackwater*, d that since during the life of the father y might have been sent thither, his death uld not vary the case. *Adjournatur*; and s term it was again debated, and the chief ice changed his opinion, holding now that settlement of the children was in *Eversly kwater*, and that the death of the father would

Children born where the father is not settled, may be sent to his settlement after death.

would not hinder their being sent thithe
Powys likewise came over; so that there we
three of that opinion against *Raymond* justic
who thought that this case must often ha
happened, if children could be thus sent aft
the death of the father. They said the ca
of settling bastards and vagrants at the pla
of their birth was *ex necessitate*, but here w
none. The order for sending the childr
to *Eversly Blackwater* was confirmed. *Str*
580.

Mother gains a settlement after the father's death, children shall follow it.

Mich. 1 *G.* 1. between the parishes of S
George and St. *Katherine*, *Southwark*. A m
settled in St. *Katherine's*, married, had
children born there, and died. After
death, the widow goes into the parish of
George, with her six children, rents a ho
of 12*l.* a year, and lives in it with her ch
dren four months. The question was, w
ther the children should be settled where th
father was settled, or have a settlement w
the mother in the parish of St. *George*: T
whole court were of opinion, that the
children were settled in the parish of
George, where the mother's last settlem
was. And by *Parker* chief justice: The
no distinction between the settlement of c
dren with the father or mother; for they
as much her's as the father's, and nature
liges her, as much as the father, to pro
for them; so doth the law; and every a
ment that holds for their settlement with
father, holds good as to their settlement w
the mother. The reason why children
not gain a settlement, where the widow g
a se

ſettlement only by intermarriage, is, be-
uſe it is then not her family, but her huſ-
nd's; and ſhe cannot give the children any
ſtenance without the huſband's leave. But
this caſe, ſince ſhe is equally puniſhable
ith her huſband for deſerting her children,
d therefore could not leave them behind
r, they muſt gain a ſettlement with her.
ley 254. *ſeſſ. ca. vol.* 1. *ca.* 69. *Mich.* 1.
o. 1.

A wife is to be ſent to her huſband's ſet-
ement, though ſhe never lived with him
ere. Note; the order was, Whereas *A.*
as born in ſuch a pariſh, we do therefore
judge him to be laſt legally ſettled there;
Mr. Juſtice *Eyre* held well; birth being
good foundation of ſettlement, and we are
ot to imagine caſes (as that his father or he
ight do ſome act to gain a ſettlement elſe-
here) to make it ill. *Seſſ. ca. vol.* 1. *ca.*
5. *The King againſt the pariſh of Pincebor-
, Oxford.*

Wife ſent to her huſband's ſettlement, tho' ſhe never lived with him there.

If a woman who has gained a ſettlement
arries a foreigner. Queſtion, whether ſhe
all not ſo far partake of the circumſtances
her huſband, as to loſe her former ſettle-
ent; for if ſhe does not partake of the fate
her huſband, it will cauſe a divorce?——
he court ſeemed to think that the ſettle-
ent is revived, being only in ſuſpence du-
ng the life of the huſband. The chief juſ-
e ſaid in this caſe, if a woman having a
tlement marries a man that has none, and
e huſband dies, ſhe muſt be ſent to her laſt
gal ſettlement before marriage. It was
urged

Woman marries without a ſettlement, does not loſe her own on his death.

urged by ſerjeant *Darnell*, that as her hus-
band was not removeable from the plac
where he was, that ſhe was ſettled at the plac
where ſhe was the laſt forty days. But b
the chief juſtice: Where a perſon ſtays fort
days in a place, where they have a right no
to be removed, that gains a ſettlement
otherwiſe, where they only ſtay in a plac
becauſe they do not know where to remov
them. Chief juſtice ſaid in this caſe, tha
he did not know that a foreigner had a righ
to be maintained in any place to which h
came, but that they might let him ſtarv
Adjudged in *Hill.* 3 *Geo.* 1. that ſhe ſhou
be ſent to her ſettlement gained before ma
riage, though the order was affirmed as
her; but this order ſending a child abo
ſeven years old from St. *Giles's*, which w
the place of her birth, to St. *Margaret's* wi
the mother, which was her laſt legal ſetti
ment before marriage, was quaſhed, as to t
child. *Seſſ. ca. vol.* 1. 97 *Eaſt.* 2 *Geo.* 1.

Settlement good, tho' the marriage is procured by fraud.

The King againſt Edwards, and others, Mi
11 *G.* 1. The defendants were indicted
the ſeſſions in *Eſſex*, and the charge agai
them in the indictment was, that they bei
overſeers in the pariſh of *A.* and there bei
one *B.* a poor lame and infirm woman
ſuch pariſh, they had given a ſmall ſum
money to a poor man of the pariſh of *C.*
marry this *B.* and by ſuch contrivance, h
conſpired to ſettle *B.* in the pariſh of *C.*
ſettlement of her huſband. Mr. Serje
Baines, moved to quaſh this indictment,
there was nothing criminal alledged there

T

he giving a poor woman a portion, and rrying her, was a good act, and could t be punishable as a crime. Secondly, he sted, that if this was a conspiracy in the endants, it was not within the jurisdiction the sessions. Mr. Serjeant *Comyns* on the er side: A base contrivance to act to the judice of another is criminal. A conspiy is indictable, though no act be done in suance of it. If this had been a conspiy to put a charge upon a single person, it been indictable; much more so where conspiracy is to put a charge upon a ole parish, as in this case the defendants e done; and insisted that the sessions had urisdiction in offences of this nature, by ute. *Chief Justice:* Indictments for conacies are not allowed to be quashed, where thing conspired is in it's own nature crial. But where it plainly appears by the ctment, that the act which was done to prejudice of another was a lawful act, court hath a discretionary power to quash. t be doubtful whether the act done be inal or not, yet if it be done with an ntent or design, we will not quash the ctment. I am of opinion the indictment his case ought not to be quashed; but the ndants must be left to demur or plead to s they think proper; to which Mr. Jus- *Powys* agreed. Mr. Justice *Fortescue*, ust be governed by the course of the t in these cases; and I never knew any ctment, for so high an offence as conspi- quashed upon motion; though the act

act was lawful, which is conspired, yet the end of it be unlawful, it is a conspira and indictable. He seemed to think t sessions had a jurisdiction in indictments this kind, and said the commission of t justices gave them a jurisdiction. Mr. Just *Raymond:* Quashing is an act of favour, a wherever the crime charged is of an hi nature, the court having a discretion power, will not quash, but put the defend to demur, or plead as he can. And by all court; the motion to quash the indictm was denied. Afterwards in *Trinity* term f lowing, the defendant demurred to this dictment; and had judgment, because it held not an indictable offence. *Sess. ca.* 1. 265.

An information unless cause, for forcing a marriage.

The King against Parkins overseer of Stud A single woman of *Studley*, being big with c of a bastard, was sent back to *Studley. Park* overseer of the poor of *Studley*, threaten with all the severity of the law, to force to marry a stranger of another parish, aga both their consents, he giving five guinea the husband, and keeping him in liquor. *ca. vol.* 1. 176. *Hill.* 6 *Geo.* 2.

A certificate-man married a second whilst the first was living; the parish gave this certificate, acknowledging the cond wife, are not only obliged to main the first, but also the second wife and t children by him. 1 *Bur. sess. ca.* 253. 2 *Se* 1233. 2 *sess. ca.* No. 206. *s. c.*

Servant marrying does not destroy the settlement.

The order was specially stated for judgment of the court. *J. S.* being an ma

rried person, and having no child, served B. from *March* 1725, to *March* 1726, in *September* intermediate he married, and ved out his year. The question was, if was a good service to intitle him to a settment? The court held it was good; and e unmarried at the time of hiring is the y thing necessary, in order to get a settlent by the service, and that the service is dissolved by the marriage. Another extion was taken: it is said in the order he last legally settled; but this was not wed, and the order of removal was quash- *Sess. ca. vol.* 1. 121. *Mich.* 1 *G.* 2. *The g against the inhabitants of Sutton.*

Between the parish of Dunsfold and Ridgewick, th. 9 *Ann.* It appeared one was hired a ant to live at *Ridgewick*, for half a year, after that was hired again for another year, with the same person, and there- served a year in one continued intire ice, but by several hirings: Sir *Peter* urged, that here was a service for a , and a hiring for a year, though by se- l contracts; and that the hiring need be by one intire contract, and that so it been held, and he cited a case where *H.* a tenement of 5 *l.* a year, and also ano- tenement of 5 *l.* a year, and occupied, ; and this was held to be a renting of ement of 10 *l. per annum.* And by the : It ought to be one intire contract, and ntire service; the one being required by tatute as well as the other. If a service several contracts shall gain a settlement, one

Two hirings for half a year, and service for a year, does not gain a settlement.

one that ſerves by the month, by the wee
or by the day, may, if he continues a yea
gain a ſettlement: one may hire by the d
for charity; but there is danger of bei
chargeable in hiring ſuch a perſon by t
year; for ſuch a term as a year, it is n
ſuppoſed a maſter would have one, unleſs
was able of body, and ſo not likely to b
come chargeable. Alſo the chief juſtice o
ſerved, that by the ſtatute of *Eliz.* the r
tainer of ſervants was for a year; that ſ
tute 14 *Car.* 2. requires forty days ſtay, a
that this is as inconvenient; for by gainin
ſettlement in forty days, ſervants grew in
lent; and that theſe later acts, *viz.* 3 &
Will. 3. *c.* 11. and 8 & 9 *W.* 3. *c.* 30.
but turn the forty days ſervice into a yea
ſervice, and the hiring to be a retainer fo
year, according to the ſtatute of *Eliz.* S
535.

General hiring implies hiring for a year.

A boy aged 17 years, born in *Wincaun*
offered himſelf to ſerve *Samuel Williams*
Charlton Horethorne; who hired him to ſe
him in huſbandry, and agreed to give
meat, drink, waſhing, lodging, and clo
when wanted; but no particular time
agreed on, and the pauper apprehended
maſter might have been off, or he might h
left him at their pleaſure: nevertheleſs t
was no agreement for that purpoſe.
boy continued and ſerved him in *Cha*
Horethorne two years and an half. By
court: He gained a ſettlement there, by
ſervice, a general hiring for a year.
there are no circumſtances in this caſe

ew an intention to the contrary, or to vary from the general rule. The mere apprehension of the pauper doth not do it. *Burr's settl. cas.* 299. *H.* 24. *G.* 2. *Wincaunton and Crediton.*

A person being hired from *May-day* to *Lady-day*, then from *Lady-day* to *May-day*; and so on again in like manner for another year. The question was, Whether this gained a settlement? And the court were of opinion, it did not; for they said the hiring must be for a year. *Foley* 134. *M.* 12. *An. Horsham and Shipley.*

E. 33 *G.* 2 *Handley and Berwick St. John's.* The pauper settled at *Handley*, happening to meet Mr. *Jones*, head keeper of *Rushmore-park* in the parish of *Berwick*, St. *John*, who had then lately parted with one *Edward Hill*, who had been for many years one of his servants or under-keepers, at the wages of 3 *l.* a year and a keeper's livery, besides meat, drink, and lodging; the said Mr. *Jones* addressed the pauper thus, Do you like the life of a keeper? Which being answered in the affirmative, he said further, Then go into *Hill's* place, and you shall want no engagement. Accordingly he went, and continued in the service for three years, and received three years wages. The question was, Whether this conversation amounted to a hiring for a year, so as to gain a settlement? It was urged, that a hiring generally is hiring for a year, and that the law knows no other hiring but one for a year; and that this was an express reference to *Hill's* service,

What conversation may be deemed a hiring.

which was for a year. On the contrary, was argued, that here was no actual hiring all; and none can arise by implication, from bare service alone: and that the reference *Ned Hill*'s service, relates to *Hill*'s work on and not to his contract. By Lord *Mans* and the court: This man served three yea and received wages accordingly. But it w objected, that he was never hired at all. I admitted, that if he was hired at all, it wo by law be a hiring for a year. And upon state of this conversation, it is a clear hirin for *Hill* was a hired servant. And theref it was adjudged, that the pauper ther gained a settlement. *Burrow*, *Mansfield*, 9 *Burrow's settl. cas.* 502.

Hiring for eleven months.

John Evans was hired with *Ralph Trubs* of *Haughton*, from *Ash-Wednesday* till *Ch mas*, and served him all that time. T he went to his father in *Ranton*, and s with him for about a week. Then he turned to *Ralph Trubshaw*, and was ag hired with him for eleven months, and ser him the eleven months: He then left the *Ralph Trubshaw*, and took his clothes w him, and was absent one week. Then returned again to the said *Ralph Trubsh* and was hired with him for eleven months, accordingly served him; and then left service, and went to his father in *Ranton*, staid about one week. Then he served *John Sutton* of *Houghton* aforesaid, for a three weeks; then returned to *Ranton* as said, and staid for about a week: and returned to the said *John Sutton*, and h

ith him for eleven months, and ſerved within fortnight or three weeks of the laſt eleven onths, where, by agreement with the ſaid *ohn Sutton*, to avoid a ſettlement in the pariſh *Haughton*, he left him, took his clothes, d went into the pariſh of *Gnoſall*, and there ntinued about a week; he then returned the ſaid *John Sutton*, and continued with m ſo long as to make up his ſervice of the t eleven months; and three weeks before *riſtmas*, the ſaid *John Evans* hired himſelf ain to the ſaid *John Sutton*, for another eleven onths, and ſerved him from that time till thin three weeks of *Michaelmas* following, d then went away and married. The queſ- n was, Whether theſe ſeveral hirings were ficient to gain him a ſettlement in the pa- h of *Haughton?* *Parker* Ch. J. ſaid, this s an apparent fraud, and very different m all other caſes. *Pratt* J. ſaid, I doubt muſt take the law to be, that there muſt a hiring, and a ſervice for a year: Here ſeſſions have found it ſpecially, and there neither hiring nor ſervice for a year: And poſe a man that lives in a pariſh incum- d with poor, hires a ſervant for eleven nths only, purpoſely, by way of caution, prevent a charge upon the pariſh, the in- t is lawful, and how can ſuch hiring and ice gain a ſettlement? And as to the mat- of fraud, if there is any, the juſtices of peace are judges of that. *Eyre* J. was he ſame opinion of *Pratt* J. *Powis* J. be- abſent. Afterwards, in *Eaſter* term, after g debate and conſideration, the opinion

of all the court was, that these hirings a
service in the parish of *Haughton* were n
sufficient to gain a settlement: and thou
such hiring defeat settlements, yet if that
a mischief, it is to be remedied by the leg
slature, and not by the court, which is
judge on the law as it stands. *Fol.* 137. S
83. 10 *Mod.* 392. *T.* 3 *G. Ranton and Hau*
ton.

A person hired the Wednesday after Michaelmas, to serve to Michaelmas following, not a settlement.

The King against South Cerney. East. 5 *G.*
Order of two justices for removing a po
person from *South Cerney* to *Cottesbourn*
Gloucestershire; on appeal the sessions d
charged that order, and stated the case spe
ally. That at *North Leach* are annually h
two mops or meetings for the hiring of s
vants, the one on the *Wednesday* before *Mic*
elmas, the other on the *Wednesday* after; t
the pauper was hired the *Wednesday* af
Michaelmas, to the parish of *Cottesbourn*,
serve to the *Michaelmas* following, which
did accordingly, and received his wag
Mr. *Stevens* moved to set aside the order
sessions, because upon the case specially
ted, a sufficient settlement appeared;
person being hired according to the cu
and custom of the country, at the usual tim
for hiring servants for the year following;
said he only contended for it on the cus
of the country; but it was ruled by
court, that this is no settlement upon
face of it; there must be a hiring for a y
and that cannot be dispensed with, and
fused even a rule to shew cause. *Sess. ca.*
1. 156. *East.*

A n

A man was hired from *Michaelmas* to *Mi-*
aelmas, for 5 *l.* wages, with liberty to engage
r the harvest month, to any other person.
e served till the harvest month, and then
red for that month, and received wages for
During that month, he brewed for his
aster, and lodged in his master's house at
undridge during the whole year; and served
t the remainder of his time, and received
s 5 *l.* wages. By the court: This is in
fect only hiring for eleven months; and
e harvest month is the principal month of
e year. It is safest to keep to the statute.
we allow this, we shall not know where
stop. *Burrow, Mansfield.* 425. *Burrow's*
ttlem. Cas. 439. *H.* 31 *G.* 2. *Bishop's Hat-*
d and Saundrige.

Hiring for a year, with leave to be absent during the harvest month, not a settlement.

H. 5 *G. Coombe* and *Westwoodhay, Michael-*
s-day being on *Thursday*, a person was
ed upon the *Saturday* following, to serve
Michaelmas: And it was held to be in-
ficient to gain a settlement, being not a
ing for a year. *Str.* 143.

It was stated upon a special order, that a
id was hired for a quarter of a year, and
he and her master liked each other, she
s to continue the whole year, and have 3 *l.*
her year's wages; that she staid the year
, and had her 3 *l.* And this was held to
a settlement. *Stra.* 950. *Trin.* 6 *Geo.* 2.
tween the parishes of *Lidney* and *Stroud.*

A person hired conditionally gains a settlement.

It was moved by Mr. *Proctor* to quash an
der of sessions confirming that of two jus-
es of the peace, but specially stated for the
inion of the court. The case was, that

Hiring and service for a year, though agreed to part at a month's warning, a good settlement.

Diana Brooks was ſent by order of tw
juſtices of the peace, from *Cheping Wycom*
to *New-Windſor*, as the laſt place of her ſe
tlement. *Windſor* appealed to the ſeſſion
and the order was confirmed, ſtating that th
ſaid *Diana Brooks* had hired herſelf to li
with one colonel *Merrick*, at *Thorp* in *Surr*
to go a month on liking at five pounds
year wages, but to part on a month's wag
or a month's warning on either ſide. S
continued under this agreement a year a
three quarters in this ſervice, and her wag
were paid quarterly. It was inſiſted, that
the ſtate of this caſe, here was a hiring and
ſervice for a year, and that conſequently ſ
had gained a new ſettlement at *Thorp*, a
was ill removed to *Windſor*, and a rule w
made to ſhew cauſe; afterwards the cou
quaſhed the order, adjudging a good ſett
ment at *Thorp*. *Seſſ. ca. vol.* 2. 163. *Hill.*
Geo. 2. *Cheping Wycombe* againſt *New-Wi*
ſor.

Hiring with one's father.

, *Jeſſop* and *Miſſenden*. *T.* 13. *Ann. Sa*
Barnes lived with her father a year as a hi
ſervant, in a cottage upon the waſte, for 1
a year, beſides what ſhe could get by
ſervice and labour. And whether ſhe gai
a ſettlement thereby, was the queſtion. A
the whole court held ſhe did; there is
ground of fraud; for it was to live with
father, who might be grown old. *Fol.* 14

Agreement to part on a month's notice does not deſtroy a hiring for a year.

One who was ſettled in *Atherton*, hi
himſelf into *Barton*, for one year, at
wages, and either maſter or ſervant to be
liberty to determine the contract at the

any quarter, upon a month's notice. And is ſtated, that he ſerved the year out, but the time of the hiring the pauper declared, e made the agreement in that manner, to event loſing his former ſettlement. And on this caſe the two juſtices and ſeſſions ld it no ſettlement in *Barton*. But the urt on debate quaſhed both the orders; for is is the common ſort of hiring for a ar, with an intention to ſtay together, as fact they did; and if this ſhould be termined not to gain a ſettlement, it would erturn great numbers of ſettlements that bſiſt on ſuch hirings. *Str.* 1182. *Hil.* 16 o. 2. Between the pariſhes of *Atherton* and *arton*.

Eaſt. 1 *Geo.* 1. *The king againſt the inhabitants of Brightwell.* An hiring three weeks ter *Michaelmas* to *Michaelmas*, and then an ring for one year, and a ſervice for eleven onths, adjudged a ſettlement. *Overton*, and *vington*, 10 *Will.* 3. Note; the chief juſtice ſaid, that if there was a ſervice for a ar, on a hiring from week to week, and en a hiring for a year, and ſerving for forty ys, that he ſhould adjudge that a ſettlent. The reaſon is, becauſe till the laſt tute was made, an hiring for a year, and rty days ſervice made a ſettlement, in gard that the hiring for a year ſhewed at the perſon was not likely to become argeable, for that he was able to work, . therefore forty days is a good ſettlent to an apprentice in reſpect of his ſkill d art, by which he is ſuppoſed not to become

Hiring and ſervice for a year a good ſettlement.

chargeable; so a parishioner that has pai parish dues, or served in a parish gains a set tlement by forty days, because he is suppose a person of substance, and not likely to be come chargeable, who is so called upon; bu the late act requiring a service for a year a well as an hiring, we think it sufficient i the words be answered, considering this wit the design of the former statute. *Sess. Ca vol.* 1. 87.

Hiring conditionally.

One *Martha Brewer* was hired to *William Wake* in the parish of *Stroude*, for a quarter o a year; and if her master and she liked eac other, she was to continue a year, and t have 40 *s.* for her year's wages. In conse quence of this, she entered into the said ser vice, and continued therein one whole year and received the said wages of 40 *s.* It wa argued, that as it was in the election of eith party, during the first quarter, whether sh should continue or not, she consequent could not be originally hired for a year. Bu the court held this conditional hiring to be good hiring for a year; as the master and sh did like each other, and a year's service wa actually performed under it.

One *Ralph Harrison* was hired for a ye to *Thomas Barlow* of *Barton*, at 4 *l.* a ye wages, payable quarterly. And it was agre between them, that either of them should at liberty to determine the contract, at t end of any quarter of the said year, on month's notice. But no such notice w given by either; and the servant continu in his said master's service the whole ye

T

he servant declared at the time of the hiring, at the reason of the said hiring being ade determinable at the end of every quar-, was, that he would not be hired so as to se his former settlement. But by the court nanimously and clearly, This is a good set-ment in *Barton*. *Burrow's Settl. Case* 203. . 16 *G.* 2. *Atherton and Barton.*

E. 13 *G.* 2. *Wandsworth* and *Putney*. A y came to live with Mr. *Falkner*, without y hiring; after which his master told him, he staid a year and behaved well, he would e him a livery and wages the next year. lived there a year and four months, and ceived a guinea and a half wages. The urt inclined to think, that this was a con-ional hiring, and that the boy's service s an assent in fact, and gained a settle-nt; but referred the matter back to the ons to be more fully stated. *Sess. C. v.* 188.

Hiring by implication.

A person lived with her grandmother four rs, on an allowance of meat, drink, hing and lodging. But there appearing contract betwixt them, but that the girl ht have left her grandmother at any time, as adjudged not a hiring within the sta-. *Sess. C. v.* 2. 120. *M.* 13 *G. Gregory and Pitminster.*

Service where no contract appeared.

Two justices of peace, by their order of ept. 1727, removed *Thomas Edmonds* and abeth his wife from the parish of *Ashenden* ucks to the parish of *Aynhoe* in *Northamp-ire*, as the place of their last legal settle-t. From which order the inhabitants of

Two several hirings; one for three quarters and another for a whole year, held a good settlement, tho' the service was not pursuant to the hiring.

Aynhoe appealed to the next quarter sessions held for the county of *Bucks*, 5 *October* 1727, where, upon hearing the order of the two justices, it was confirmed; in which order the fact was stated specially, to the intent a *certiorari* might be brought, to remove the orders into the King's Bench, that the opinion of that court might be had thereupon. And the fact specially stated was this, *viz.* That the said *Thomas Edmonds* was about fourteen years since hired for a year to *Abraham Wrighton* at *Aynhoe*, and served him that year, and received his year's wages, and afterwards at *Michaelmas* 1725, went to Mr *Thomas Potter* at *Bisister* in *Oxfordshire*, to be hired, who told him he would not hire him then, because he expected a man-servant in three weeks; but if he would supply the place of such man-servant till he came, then he the said *Thomas Potter* would pay him for his time: whereupon *Thomas Edmonds* entered into the service of *Thomas Potter*, and lived there till near *Christmas* following, and then was hired to him, and served him at *Bisister* till *Michaelmas* then following; and then at *Michaelmas* 1726, he was hired at *Bisister* aforesaid for a year to his said master *Potter* and stayed in such service till the *Midsummer* following, and no longer. These orders being accordingly removed into the King's Bench by a *certiorari*, it was argued by Mr *Lee* for the defendants, that the order ought to be quashed; the said *Thomas Edmonds* appearing to be last settled at *Bisister*; because though the statute requires a hiring and a

vice for a year, it does not require the hiring and service ſhould be under the ſame contract. Mr. *Reeve*, *e contra*, argued, that it did not appear *Edmonds* was ſettled at *Biſiſter*, becauſe he inſiſted he ought to be hired for a year, and ſerve that year: and he ſaid, it had been held between the inhabitants of *Rudwick* and *Dunsfold*, that if a poor man is hired for half a year, and ſerves that half year, and then is hired to the ſame maſter for another half year, and ſerves that alſo, that would not make a ſettlement. But the court held, theſe hirings and ſervice did make a ſettlement; for he was hired for a year, and ſerved a year. And the orders were quaſhed. *Lord Raym.* 1511. 1 *Geo.* 2. The King againſt the inhabitants of *Aynhoe*.

Between the pariſhes of *Beccles* and *Leowe-off*, *Eaſt.* 17 *G.* 2. The pauper was hired a blackſmith for a year, at 3 *l. per annum*, to be paid when the ſervant wanted it. During the year, the maſter gave him leave to work with another ſmith for three days, with a ſecond for a week, and with a third for a fortnight, and agreed the ſervant ſhould have the benefit of it; he then returned, and ſtaid out the year, and the maſter, by conſent of the ſervant, deducted the proportion of wages for the time he was abſent; and upon this ſtate of the caſe the ſeſſions held that no ſettlement was gained, the firſt contract being diſſolved. But by the court: the order muſt be quaſhed, for this is not a diſſolution of the contract, but a licence to be abſent, and both parties conſidered it in that light, by continu-

Abſence of a ſervant by maſter's permiſſion does not deſtroy a ſettlement.

ing together to the end of the year. The accelerating the payment of wages for the convenience of the ſervant, which is frequently done, without a particular agreement, makes no alteration. *Stra.* 1207.

Serving out the year with an executor in another pariſh, a ſettlement.

A woman was hired for a year, and ſerved half a year, when the maſter died; the executor, (who lived in another pariſh) aſked the ſervant if ſhe would ſerve out the year with him; ſhe did ſo; and the court held it a ſettlement in the executor's pariſh; for the laſt ſervice is not to be conſidered as a new agreement, but a continuation of the firſt. *Stra.* 1164. *Eaſt.* 15 *Geo.* 2. between the pariſhes of *Ladock* and *St. Ennidore.*

Hired ſervant ſettled where the ſervice is.

Mich. 9 *G.* 1. between the pariſhes of *St. Peter, Oxon,* and *Chipping Wycomb, Bucks.* Upon a ſpecial order of ſeſſions, it appeared that the maſter of the *Oxon* ſtage coach hired a ſervant for a year to ſtay in an inn at *Wycomb,* where the coach baited, and take care of the horſes; he lived there the whole year; but as the maſter lived all the time in *Oxford,* the ſeſſions adjudged the ſettlement of the ſervant to be with him. And by the court: The order muſt be quaſhed; for the ſettlement is gained by the ſervice which was in *Wycomb*; and it would be hard to make it a ſettlement in *Oxon,* when the officers there had no power to remove him; the officers of *Wycomb* might have removed him, if they had pleaſed, but as they did not do it, they muſt provide for him. *Stra.* 528.

A. kept a glaſs-houſe in the pariſh of *Whitechapel*, and hired *B.* for five years, to work at this glaſs-houſe, at the rate of 10*s.* a week, *B.* never lodged with *A.* in his houſe any part of the time, but at another houſe in the pariſh; and on a diſpute where *B.* ſhould be ſettled, the juſtices adjudged his ſettlement to be in the pariſh of *Whitechapel*; which order being removed by *certiorari*, Mr. Serjeant *Hawkins* moved to quaſh it, becauſe this was not ſuch a ſervice as was intended by the ſtatute of 3 *Will. & Mary*, *c.* 11. for as this man had never lodged in his maſter's houſe, he could not be conſidered as one of his maſter's family; and therefore was not ſuch a ſervant as could gain a ſettlement by the ſtatute. By the court: The order is good, and *B.* has gained a ſettlement in *Whitechapel*; for being hired to ſerve above one year, and having ſerved and reſided in the ſame pariſh purſuant to ſuch hiring, he hath fully complied with the ſtatute, and it is not material whether he lodged at his maſter's houſe or at any other houſe, if he be within the ſame pariſh. Order affirmed. *Seſſ. C. vol.* 2. *cap.* 114. The King againſt the pariſh of *Whitechapel*.

Servant hired for above a year, and having ſerved it, and reſided in the ſame pariſh with his maſter, gains a ſettlement.

The perſon to whom a pauper was hired lived at *Goring*, and kept a boat which navigated from *Goring* to *London*, and plied at ſeveral places ſpecified in the order; but the pauper was not forty days in the whole year at the pariſh of *Goring*, but ſerved out the year on board the boat; and the queſtion was, Whether the hiring and ſervice would make a ſettlement at *Goring*? Mr. *Reeve*, to quaſh

Perſon hired to navigate a boat, and ſerves for a year on board the boat, does not thereby gain a ſettlement.

quash the order, said, That there was an hiring and service, and notwithstanding the words, "that he had not served forty days in the whole year," must be meant forty days together, which is not necessary; he admitted, that in the case of a boy hired to serve on ship-board, it had been held not to gain a settlement, but that was, because no settlement in the parish. Lord Chief Justice said, He could not distinguish the case at bar from the case last mentioned. Mr. Justice *Page*: The reason why parishes are made liable is, because they are presumed to gain by the party's service; therefore the order of removal and the order of sessions were confirmed by the whole court. *Sess. Ca. vol.* 1. 327. *East.* 4 *Geo.* 2. *Goring* parish against *Molesworth* parish.

Servant going to sea with his master's leave, and finding a substitute, is settled.

A servant man was hired for a year, during which, with his master's leave, he went to sea upon the herring fishery, but hired another person to do his work in the mean time; he returned at the end of three weeks after the expiration of his year, settled with his master, and received his whole year's wages. This the sessions held was not a service for a year; but the court held it a settlement; saying, he was to be considered all the time as in the service of his master, and the person he found to do his work was his servant, and not the master's; wherefore the order was quashed. *Stra.* 1232. *Trin.* 18 *Geo.* 2. Between *St. Peter* in *Sandwich*, and *Goolaston* in *Kent*.

Upon

Upon motion to confirm an order to remove *Hugh Pool* and his wife from *P.* to *B.* The fact was, that he served one year in *P.* and after was hired to serve a year in *B.* except three weeks, and then being a covenant servant, parted with his master by consent, he deducting 6*s.* for the three weeks; his wages being 3*l. per annum.* It was urged, that as a covenant servant, he could not be discharged by consent, and therefore continued a hired servant for a year. Besides, that this was a fraud to prevent the settlement, since it did not appear that he grew sick, or less able to serve than when he was hired, and notwithstanding, he was discharged. *C. Justice*: There is no difference between a covenant by deed or by parol, as to a settlement; for though the consent does not discharge the covenant, yet it does the service, and the act turns upon the service. His master deducting 6*s.* his wages being but 3*l.* shews that there was no fraud or temptation to the man to go; but it appears to be the man's choice, and that the master would have kept him. Nothing can make this a settlement, unless there be a fraud apparent or expressed. Order quashed. *Sess. Cas. vol.* 1. 71. *Mich.* 1 *Geo.* 1.

Consent to part, discharges the service.

There is no difference between a covenant by deed or by parol, as to settlement, for the consent discharges the service.

Pawlet against *Burham*, *Eastland* and *Westerly*. *Trin.* 8 *G.* 1. The fact was stated specially, on an order of sessions, that a man-servant was hired for a year, and the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting that he

Turning the servant out before the end of the year, doth not prevent the settlement.

he would serve out the year; whereupon the master turned him out of doors. And the court held this to be such a fraud in the master, as should not prevent the settlement of the servant. *Stra.* 526.

Servant removing with his master in the second year, gains a settlement.

Mich. 19 *Geo.* 2. *Croscombe* and *St. Cuthberts.* A servant was hired for, and served a year in *Croscombe.* He afterward continued to serve without any new agreement for a quarter of a year, when the master removed into a house in *St. Cuthberts*, where the servant continued with him for half a year, and then married. The question was, Whether this was a settlement in *St. Cuthberts*, within the reason of those cases that have held the settlement to be gained where the last forty days service was? And the court held it a settlement there; for it is still a continuing in the same service within the meaning of 8 and 9 *Will.* 3. *c.* 30. though there is no new agreement. And upon the whole, there has been between this master and servant a hiring and service for above a year. *Stra.* 1240.

Same service, but not with the same master.

E. 4 *G. Ivinghoe* and *Solebury.* A person being hired for a year to one *Knight*, who rented a farm in *Ivinghoe*, lived with him half a year. The master lets the farm to one *Smith*, and the servant lives the remainder of the year with *Smith* in the farm, without any words passing about dissolving the contract with *Knight*, or making any new contract with *Smith.* At the end of the year, the second master paid him his wages. The question was, If this shall be deemed the same service, so as to gain a settlement? By *Pratt*

Chief

Chief Justice, and the court. This is a good settlement. If a master command his servant to live with another for a certain time, it is a service to the first master; and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages, did not alter the case; for the contract not being destroyed, he might have brought an action against the first master. *Sess. C. v.* 1. 121. *Cases of* . 109. *Stra.* 90.

Where servant obtains leave to be absent for one day, and stays three.

A servant being hired for a year; and in the year's service his master permits him to go and see his mother for one day, and he stays three days, and then comes home again, and his master takes him into his service as before. It was objected, that his staying to see his mother without leave was a desertion of the service, and the time he stayed away takes much off from a complete service for a year. But by the court: This will not prevent the settlement; for the master's taking him again is a purgation of the offence, and no interruption of his service.—In the same case was stated, that the servant for six days was sick, and incapable of any service: And it was objected, that therefore he could not gain settlement, because it was to be acquired only by a service for a year; but he did not serve for six days, therefore there wants so much of a service for a year. But by the court: A servant that lies thus under the visitation of God, which befalls him not thro' his own default, is all the while in the service of his master; and if this exception were to be

Or where he is sick and cannot work.

be allowed, it might prevent all the settlements in the kingdom.—Another circumstance in the same case was this: The servant, three or four days before his service expired, desired leave of his master to go to a fair, to hire himself into another service. His master refused, telling him, that if he went he should not come into his house again. The servant went notwithstanding, and did not return until the time of his service was expired. By the court: This is nevertheless a settlement. The request of the servant is a reasonable request, and the law will not permit a master to shew himself inhuman to his servant. A master cannot turn off his servant two or three days before the year expires; if he doth, the service in point of law continues, and he gains a settlement notwithstanding. *Cases of Settl.* 129. *Str.* 423. *Eq.* 7 *Geo. King and Islip.*

Or where a master wants to turn him away a few days before the end of the year, he shall not lose his settlement.

Mich. 9 *G.* 2. The parishes of *Syford* and *Castlechurch.* A man was hired for a year, which he served till the last twenty-one days, when he went away, with his master's leave, and staid till after the year was up, at which time he returned for his clothes, and was paid the whole year's wages: And on consideration, that if they once allowed this absence for twenty-one days, at the end of the year (which differed from an absence in the middle of the year, which was purged by taking back again) they should not know where to stop, it was determined that he gained no settlement. In this case, the servant went from his service before the year was out, and the master c

Servant quitting his master (with leave) 21 days before the time, no settlement.

ented to it; which is a plain determination of he service within the year. *Stra.* 1022. *Burrow's Settl. Caſ.* 68.

Hill. 10 *G.* 1. *Mungerhunger* and *Warden.* n exception was taken to an order of the ſtices for the ſettlement of the poor; for that is ſaid to be made upon due examination, ithout ſaying that examination was taken pon oath. And upon an appeal from this rder, the quarter-ſeſſions quaſhed the order r this irregularity, as they held it; and ow the order of ſeſſions, which quaſhed the rſt order was moved to be quaſhed, upon a ggeſtion that the order of two juſtices of the ace was a good order; and the order of ſeſ- ns was quaſhed. For by the court: It is ough to ſay, the order was made upon due amination, without ſaying upon oath, tho' e ſtatute directs the examination to be upon th; for where it is ſaid in an order to be made on due examination, it ſhall be intended to upon oath according to the ſtatute. And the caſe of the inhabitants of *Cirenceſter* s term, it was held ſufficient to recite in order, that upon due examination of the ty, and upon his affirmation, *&c.* without ing that the party was a quaker; and that ng forty days ſucceſſively was not neceſ- . And Mr. Juſtice *Forteſcue* ſaid, that ng forty days off and on, is making the ſtronger, than living forty days together parish. *Lord Chief Juſtice*: Where an r is made by juſtices of peace, and that t is quaſhed at the quarter ſeſſions, and the order of ſeſſions is quaſhed in this court,

Order made upon the examination, inſtead of examination upon oath.

The forty days inhabitation need not be all together.

court, the original order shall stand, and the justices have no jurisdiction about it. *Sess. Ca. vol.* 2. 40.

Man rated to the poor, and the tenant pays the money, the tenant does not gain a settlement.

Mich. 13 *G.* 1. *The King against Sealey, Tongal and Worpelston.* Motion to quash an order of sessions, which set forth the matter specially, and adjudged a man, who was a tenant, and paid four pence to the poor on account of his tenancy to have gained a settlement, when the pound rate was charged entire upon the landlord. Upon the rule to shew cause, it was said, the premises were demised, and a deduction taken for that part according to the proportion of the rate imposed upon the whole. The overseers cannot charge; the charge is the effect of the rate, and the whole is charged as being in the hands of the landlord. He shall not get a settlement, though he pays a proportionable rate for a part rented of the owner; and the rule was made absolute to quash the order of settlement. *Sess. Ca. vol.* 2. 122.

Paying gives no settlement, if not rated.

Payment to the poor does not give a settlement, unless the party was rated: for the rating is the act of the parish, and not the other. And the settlement arises from the parish's giving that evidence of their being satisfied of his ability. *Stra.* 1023. *Mich.* 9 *Geo.* 2. The King and *Bovindon.*

Payment to the land-tax held to gain a settlement.

Hill. 9 *G.* 2. The King against *Bramley.* Two justices make an order to remove *John Close, &c.* from *Armley*, another township in the same borough, to *Bramley*, who appeal, and the sessions confirm the order and state specially, that the said *John Close*, after his settlement

ment in *Bramley*, removed with his family, and inhabited and farmed lands at *Armley*, for which he was charged and paid two quarterly payments to the land tax only. It was moved to quash these judgments, and said it has been determined, that paying to the land-tax in the case of a tide-water, who was allowed it again, gained a settlement. *Oakhampton* against *Kentown*, *East*. 7 *Geo*. 2. *Comb*. 410. 1 *Mod*. 331. Mr. *Wilson*, on shewing cause, insisted that this was a yearly tax, and the payment of two quarters not sufficient. But by the court: It is a good settlement; and the orders were quashed. *Sess. Ca. vol*. 2. 67.

Parish clerk nominated by the parson, gains a settlement.

An order was drawn up for the opinion of the court; and the question was, Whether he appointed clerk of the parish by the parson, and executing the office for a year, would gain a legal settlement within 3 & 4 *Will*. and *M*. of which the words are, *viz*. shall execute any annual office. For it was objected, that this was not an annual office. Mr. *Lechmere contra*: The intent of the act was, that no office under an annual one should gain a settlement, and *Majus continet in se minus*. On the general nomination to the office of parish clerk, he is in for life. *Powell*, His being put in by the parson makes no difference, any more than where the constable is put in by the leet, and not by the parish: it is more than an annual office; he is not removeable, and has fees. *Eyre*, *J*. He but a servant to the parson at will: where comes in by election, he has an estate for life

life by the cuſtom, but here is no deed o writing: how therefore can he have an eſtat for life in this office? *Powell, J.* At tha rate he had not an office at will without deed The office of churchwarden was by commo law, and yet that is for a year without an deed or writing. So it is of a pariſh clerk he is by common law an officer, and is in fe life without deed; ſo ruled *abſente. Parke C. J. Salk.* 336. *Hil.* 10 *Ann.* Betwee *Batton* and *Milwich.*

The office of tithingman gains a ſettlement.

Burleſcome and *Sampford Peuerel. Hil.* 9 1. The ſeſſions on a ſpecial order adjudg that executing the office of a tithingma would not gain a ſettlement. And by t court: The order muſt be quaſhed; for th is an annual office in the pariſh within t words and meaning of the act of parliamen *Stra.* 544.

Officiating as ſchoolmaſter and receiving 10l. per annum.

A perſon was certified for *Sheepſtead Melbourne*, and ſtaid ten years; during th time Lady *Elizabeth Haſtings* conveyed lan to truſtees for ſeveral charities out of the pr fits, and (*inter alia*) the ſum of 10*l. per a num*, to the charity ſchool at *Melbourne*, to paid to the vicar there for the time being; a ſpecial order of ſeſſions it was ſtated, t the certificate-man officiated as ſchoolma ſeveral years, and received the 10*l. per ann* from the vicar: and this the ſeſſions h gained him a ſettlement in *Melbourne*, wh they declare he had a freehold eſtate. A by the court: The order muſt be quaſh for it does not appear how he came into t employment, and the legal right to rece

he salary is in the vicar, who not caring to ficiate himself, has paid it over to this man his deputy; which could never give a set-ement to any person, much less to a certi-cate-man.

It was stated upon a special order of sessions at a poor person rented a coney warren and cottage upon it at 10*l. per annum*, which e justices did not think gained him a settle-ent within the *stat.* of *Car.* 2. But by the urt: A mill has been held to be a tenement ithin that statute; and why may not this? is his ability to pay 10*l. per annum*, that is e foundation of the settlement, and whether pays it for a house for habitation, or for a arren which brings him in a profit, is im-aterial; the order of sessions must be quashed. r. 678. *Hil.* 12 *G.* 1. *Kinever* and *Stone.*

Renting a warren of 10l. per annum gains a settlement.

Trin. 3 *G.* 1: *South Sydenham* and *Lamerton*, and *W.* were removed from *Lamerton*, to *uth Sydenham*, having there taken a lease of nds of the value of 13*l. per annum*, for 33 ars, determinable on three lives, part of hich lands to the value of 4*l.* 10*s.* lay in *uth Sydenham*, the messuage and the rest lay *Lamerton*, and the rent reserved was but *l.* Two justices adjudged that *A.* was settled *South Sydenham*, where he had an un-ubted settlement previous to the lease, hich adjudication was confirmed by the ions. Mr. Serjeant *Glyde* moved to quash is order. Mr. *Reeve*, in defence, urged at the statute 13 & 14 *Car.* 2. *cap.* 12, says, at a person having a tenement under the lue of 10*l. &c.* and that the reserved rent

Renting 10l. per annum, being in two distinct tenements in different parishes, gains a settlement.

must

must be the rule and measure of the valu and though the tenement be worth 13*l.* th made no alteration. By the court: T quantity of the rent is not material, but t value of the tenement. If there be a lease lands worth 10*l.* and a fine to be paid, a 20*s.* only reserved, it is the same thing. T difficulty is that the lands, to the value 10*l.* lie not all in one parish; but if t tenement be intire, though the lands be different parishes, it seems to be a teneme of 10*l.* *per annum* where the house is; othe wise where the tenements are distinct and in different parishes, as a tenement of 3*l.* another. A person that can rent 10*l.* *per a num*, is presumed unlikely to become charg able; therefore it is hard to send him awa But by Mr. *Justice Eyre*, under 10*l.* a likely to become chargeable, are convertib terms. Order quashed. *Sess. Ca. vol.* 1. 11

Pauper renting a tenement of 30*s.* a year in one parish, and then hiring lands of 12*l.* a year in another; a settlement where the tenement was.

Special order: the short state of the ca on which the point was, whether the paup who had rented a tenement of 30*s.* a year ——— for 2 years, and then took a parcel land of 12*l.* a year, and occupied that, a continued in possession of the former teneme during that time, had there lived and gain a settlement in the parish where the teneme was.——By the court: The statute does n seem to intend that it should be one rentin but the construction which has been put been on different takings, and upon this r son, that a person of ability to take 10*l* year, takes off the presumption of his be likely to become chargeable and the ord

ere quashed. *Sess. Ca. vol.* 2. 166. *Trin.* *Geo.* 2. The *King* and *Sandwich*.

B. 2 *Geo.* 3. The parish of St. *Devereux* nd *Much Dewchurch*. The question that as before the sessions was, Whether the arriage of *John* and *Susannah Meredith* was ufficiently proved? One witness made oath, hat he and another were present on the 7th ay of *February*, 1758, when a marriage was olemnized in the parish church of St. *Devereux*, between the said *John* and *Susannah Meredith*, by bans. And it appearing to e said sessions, that the entry of the said arriage in the register book of the said pa-sh was made in manner following, *viz.* 1758, *John Meredith*, and *Susannah Jenkins*, were married by banns;" but neither e minister, parties, nor witnesses signed ch entry; they therefore were of opinion, at the marriage was not legally proved. n shewing cause, it was urged in support their opinion, that this appeared to be a id marriage. For although the omission of ns, was originally only an offence against e ecclesiastical law; and even after the 7 8 *W. c.* 35. *s.* 2. the minister and clerk d man married without licence or banns, re only liable to a penalty; yet since the act the 26 *Geo.* 2. *c.* 33. an entry of this, pro-ly signed, is become so essential a circum-nce, that without it the marriage itself is d. But the court were of a different opi-n. And lord *Mansfield* said, it was not umbent on the persons married, to prove t the banns were published, nor doth the

Where entry of banns is not regularly made.

entry directed to be made affect the validi of the marriage. But he declared, it was matter of great public concern, for the pr ſervation of pedigrees (which were now b come very difficult to prove): And the ent ought to have been according to the dire tions of the act. He even declared, th an information ought to be granted by t court againſt the miniſter for omitting it, it ſhould appear clearly that it was owing his neglect; and that ſuch information ſho be proſecuted by the attorney general, at t king's expence; which he did not dou would be readily directed, upon the reco mendation of the court. And he ordered t fact to be further inquired into. And it ca out, that a regular entry had been made; a that which was produced to the juſtices, w only a minute or memorandum; the mini was therefore juſtified. *Burrow's Settl. C* 506.

Wife ſhall follow the Huſband's ſettlement.

It ſeems generally agreed, that a wom marrying a huſband who hath a known tlement, ſhall follow his ſettlement. A though in the caſe of *Uppoterce* and *Dunſ M.* 1 *G.* it was held, that the wife ſhall gain a ſettlement with the huſband, until hath lived with him 40 days unremoveabl part of his family; yet afterwards, in caſe of *K.* and *Pincehorton*, *M.* 3 *G.* it agreed by the court, that a wife is to be to her huſband's ſettlement, though ſhe n lived with him there. And in the caſ St. *Giles's* and *Everſley Blackwater*, *H.* 1 the widow was removed to the deceaſed

ba

nd's settlement, though she had never been ere; and it was ruled by all the court, that e removal was good, and that she must be t to the last legal settlement of her husband, ving acquired no other settlement since his th. *Cas. of S.* 89. *Sess. C. v.* 1. 10, 105. *v.* 112.

E. 2 *G.* Parishes of St. *Giles* and St. *Mar-et's.* A woman married a foreigner; and husband died. By the court; she must sent to the place of her settlement before riage. *Sess. C. v.* 1. 97.

Mich. 1 *G.* The parishes of *Uppoterce*, and *nsfwell.* A woman settled in *Dunsfwell*, af-wards marries a vagrant, whose settlement s not appear. But he goes to *Uppoterce*, dies there. Two justices remove the wi- to *Dunsfwell*, where she was settled be- marriage. And by the court: Where it ears that the husband had no legal settle-t as can be found, the marriage shall not her in a worse condition than she was re, and is the same as the case of a *Scotch-* and a foreigner, and she shall not lose her er settlement. *Case of S.* 89. *Sess. c. v.* 1.

Widow, where the husband had no settlement.

ne *Sarah Etherington*, was settled at St. 's; and married an *Irishman*. By the t: The marriage will not put her in a e condition than she was before; and held that she continued her settlement, withstanding her marriage. *Cas. of S.* 98. 3 *G.* St. *Giles* & St. *Margaret's.*

Marrying an Irishman not to deprive of settlement.

Mich. 9 *G.* St. *Michael's*, and *Nunny.* Or-of removal, reciting that the wife of a

Whether the wife may be removed from the husband.

poor perſon who is now living was likely become chargeable, and the place of her ſ tlement was in the pariſh of St. *Michael*, is therefore removed thither. It was mo to qualh the order, becauſe it did not appe the huſband was at the time of the remo in the pariſh of St. *Michael*, ſo that it is p ſible they may have ſent the wife away fr the huſband. But by the court: We c not intend he was not; if he was in the riſh from which ſhe was ſent, that ind would vitiate the order; but as neither theſe facts appear againſt the order, to ſat us that it is bad, we are not to preſume i be ſo; and therefore it muſt be confirm *Str.* 544.

A leaſe at will gains a ſettlement.

It was ſtated upon a ſpecial order of ſeſſi that a certificate-man agreed with the leſſe a mill, that he ſhould occupy the mill, pay 12 *l. per annum*; that there was no u leaſe or aſſignment, but in purſuance of ageement, he occupied the mill two y and paid the rent. The ſeſſions adjudg no ſettlement. And by the court: The o muſt be quaſhed; for if this be not an a lute leaſe for a year (as *Eyre* Juſtice ſa was, the rent being reſerved as the rent year) yet it is undoubtedly a leaſe at which is ſufficient to gain a ſettlement. 502. *Hill.* 8 *Geo.* 1. *Cranly* and St. *Buildford.*

An entire tenement of 10l. per annum, though it lies in two

By the 9 & 10 *Will.* 3. *c.* 11. No ce cate-man ſhall gain a ſettlement in the p to which he comes with ſuch certificate, pariſhes, gives a ſettlement where the party lies.

s he take a lease of 10*l. per annum*, or all execute some annual office in such pa-h. In this case the certificate-man took a rm of 10*l. per annum*, part of which was St. *John's*, and part in *Amwell*, but the eatest part, together with the house, was ted to lie in the parish that received his rtificate, the court therefore held it a set-ment there. *Stra.* 525. *Mich.* 9 *Geo.* 1. *John's*, and *Amwell.*

Mich. 11 *G.* 1. The *King* and *Wyley*. On order of session the case was thus: *J. S.* ilt a cottage upon the waste belonging to Earl of *Pembroke*, without his licence, o never offered to disturb him in his pos-ion, and he lived in this cottage 30 years, d by his will left 3 guineas, in the hands executors to purchase this cottage of the rl of *Pembroke*. Upon his death, *Elizabeth*, only child and heir at law, entered into cottage, and afterwards married one *Bar-*, and they had quiet possession for three arters of a year, and then sold it. The estion was, whether the daughter of *J. S.* d *B.* her husband had gained a settlement, virtue of this inhabitancy in the parish *Wyley*, in which the cottage was. Mr. *ve* argued that this inhabitancy gained settlement; the cottager was a disseisor, d had no right to build upon the waste, was at any time removeable by the lord the waste, and if he might have been re-ved for days, his long possession shall give title; for he must only be considered as a ant at will, and consequently his conti-

A cottager 30 years in possession, held a good settlement.

nuance upon the cottage, though never long, could give him no settlement; a none claiming under him shall be in a bet condition. The statute of 31 *Eliz. c.* prohibits the building of cottages; theref the erection of one is unlawful, and sh have no privilege or encouragement. I mit, if a person inhabits by virtue of a lea or other good title, for 40 days, he gain settlement. But the inhabitancy in this c was without any good title, and consequen can gain no right of settlement. These jections were answered by the court, w held it clearly to be a good settlement. A though it was further objected, that the c tager himself was sensible he had no rig by his devising money for the purchase o term, under the lord of the waste, yet it over-ruled. And by all the court it was h That when a man had such a possession he cannot be removed from, and hath enjo that possession 40 days, he thereby gain settlement; which is the reason why a co holder or lessee for years gains a settlem by an inhabitancy for 40 days: For in th cases the justices of the peace cannot de mine his right; this present case is strong, for the thirty years possession of cottager without interruption, would h been a good title in an ejectment; and that reason the justices of peace cannot termine his title. It appears upon the of the order, that the cottager had a g title against all the world, except the lor the waste, and against him he had a g

le in ejectment, and in any case but in a al action. *Lord chief justice Raymond* said, e had known recoveries upon a 20 years uiet possession, and 20 years possession is a le to the plaintiff in ejectment as well as to defendant. After so long a possession as is, it shall be presumed that the cottager d a licence to erect a cottage; but this se goes further, for besides the 30 years iet possession of the cottage, here is a dent cast upon the daughter, who was heir the cottager, and *prima facie* it is an inhetance in the daughter, and an estate by sseisin is in law a good estate, and a feeple, till it be defeated. And all the court ld that the justices had no jurisdiction in is case; for they could not examine the le to land; and the settlement in the parish *Wyley* was adjudged to be good, and ashed the order made to remove *Barrow* d his wife to *D.* the place of *B*'s last legal tlement in *Somersetshire*. *Sess. Ca. vol.* 2. 5.

An acre of land in *Cotleigh*, wherein *A.* d a lease for lives, was mortgaged to a uper for 15 *l.* When the mortgager died two ars interest was due, and he also owed 18 *l.* s. to the mortgager by bond and simple ntract; and it was agreed between the dow, and the mortgager, that he should minister, and take all but the houshold ods, which he did. And the sessions hay- g held, that his taking to this acre, and living on it 8 years, did not gain a setment under 9 *Geo.* 1. *c.* 7. which requires

A purchase of 3cl. value to make a settlement.

a *bona fide* payment of 30 *l.* the court now quashed the order, it being to all intents of law and equity the same as actual payment of the consideration money. *Stra.* 1162. *Hill.* 15 *Geo.* 2. *Cotleigh* and *Stockland.*

Renting a wind-mill of 14*l.* per annum, by a certificate-man held a settlement.

East. 13 *G.* 2. *Hatfield* and *Furley.* Upon a special case stated, the question was, whether a certificate person, had gained a settlement by renting a wind-mill in *Benhall*, of 14*l.* *per annum* (that is) whether it was a sufficient tenement, within the statute, though it was admitted that in *Salkeld* 536, a water-mill was held a tenement, and the renting of it clearly a settlement within the statute. Yet it was objected in this case, that it appeared, while he rented it under a lease, he gave security for the rent, and for the last years he was only a tenant at will; now the foundation of the settlement is the credit of the party renting, and that fails in this case it was argued on the other side, that he that has credit to give security, has credit to pay rent: The *King* and *St. Mary Guildford*, *Hilary*, 8 *Geo.* 1. renting a wind-mill generally was held good. Court: No difference what sort of mill it is, but it will gain a settlement and the giving security for the rent does not alter the case, and the order of sessions was quashed. *Sess. Ca. vol.* 1. 320. *Trin.* 11 *Geo.* 2. *Buckley*, and *Benhall.*

Descent of a copyhold to a certificate-man, gains a settlement.

E. 5 *G.* 1. *Burclear* and *Eastwoodhay.* On a special order of sessions the case was stated. That *Abraham Hatchett*, was legally settled in the parish of *Burclear*, and about 18 years since married and had four daughters. About 8 years

years ſince, he and his wife and children me into *Eaſtwoodhay*, on his being a certifi-te-man; whilſt they were there, a copy-old of 20 *l. per annum* deſcended to his wife, hich they enjoyed for 5 years, till her death, d then, according to the cuſtom of the anor, it deſcended to the eldeſt daughter. bout half a year ago, the man aſked relief *Eaſtwoodhay*, and thereupon the ſeſſions d him back to *Burclear*. Before they took the caſe upon the ſpecial ſtate of it, an jection was made to the order of two juſ-es, that they adjudge him likely to become argeable; whereas a certificate-man is not moveable, till he becomes actually charge-le. And though it is ſtated by the order ſeſſions, that he aſked relief of the pariſh; one order ſhall not be made good by ano-er, any more than it can by matter alledged return. To which it was anſwered, that the order of two juſtices is to ſtand by it-f, it will be well enough; for it is a gene-order of removal, wherein no notice is en of his being a certificate-man, and refore probably is ſufficient. Beſides, that er is intirely out of the caſe; for the cial matter being referred to the court, y are to judge upon that only. *Quod fuit ceſſum per curiam*; then it was moved to aſh the ſpecial order; becauſe though the n came into *Eaſtwoodhay* with a certificate, the enjoyment of the copyhold for 5 rs, during which time he was not re-veable, had gained him a ſettlement there.

On the other side it was said, that the 9 & 10 *W.* 3. *c.* 11. having provided that a certificate-man shall not gain a settlement, unless he takes 10 *l. per annum*, or serves a parish office, and that being an explanatory act which is not to be explained; therefore the man not coming within either of these cases was, notwithstanding the descent of the copyhold to his wife, removeable upon his becoming a charge to the parish. And by the court: This is not an explanatory, but a new law; and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable than either of those that are there mentioned. If a certificate-man by taking 10 *l. per annum*, gains a settlement, *a fortiori*, shall he that has an estate of his own, especially in this case, where he does not come to it by an act of his own, (which might savour of fraud) but it is cast upon him by the act and operation of law. If he that serves a parish office gains a settlement upon account of the presumed ability, with greater reason shall he that has ability of his own visible to all the world. It has been already adjudged that any other person by the descent or purchase of a freehold or copyhold, or by becoming intitled to a lease for years, gains a settlement; and it cannot be supposed the parliament intended, to put a certificate-man in a worse condition. The possession of the copyhold is not material, for if it is, its being his own makes him not removeable. A man may take a tenement of 10 *l. per annum*, to gain a set

hold eſtate for life, and lived therein 4 or 5 years, and died. And this being a tenement under 10*l.* a year, the queſtion was, upon the 13 & 14 *C.* 2. whether this gained him a ſettlement at *Edgeware.* It was argued, that the ſtatute hath been always held to mean an eſtate which a man takes to farm, and not an eſtate of his own; for a perſon having a freehold, cannot be removed from it, though not worth 10*l.* a year. And by *Parker*, Ch. J. and the court: Where a perſon has an eſtate for life, or an eſtate of inheritance of his own, it gains him a ſettlement, though leſs than 10*l.* a year. *Foley* 257.

Trin. 7 *G.* 2. Pariſhes of *Sundriſh* and *Hever.* One *Thomas Perch*, by indenture demiſed to *Thomas Gates* the father, a cottage at 5*s.* a year, which was the full value, for 99 years. The leſſee held it till his death, and deviſed it to *Thomas Gates* the ſon. The queſtion was, whether the ſon, as executor, being entitled to the term, ſhall gain a ſettlement by inhabiting in ſuch cottage? By the court: Where a man lives upon his own, is a caſe of a very tender nature, and the law will not unſettle him: Perſons to be removed under the ſtatute of *C.* 2. are thoſe that wander from place to place, and not thoſe who live upon their own eſtate: And it was adjudged, that he gained a ſettlement. *Seſſ. C. v.* 1. No. *Stra.* 983.

By the 13 & 14 *C.* 2. *c.* 12. it is enacted, that whereas the number of poor within *England* and *Wales* is very great; and where- Of removal of the poor.

as,

as, by some defects in the law, poor people are not restrained from going from one parish to another, ——— it is enacted, that within 40 days after any such persons shall come to settle in any tenement under 10*l.* a year, two justices, (one of the *quorum*) may remove them where they were last legally settled, unless they give sufficient security for the discharge of the parish.

Certificate men shall be provided for, in other parishes.

By the 8 & 9 *W. c.* 30. it is enacted, That for as much as many poor persons, chargeable to the place where they live, merely for want of work, would elsewhere maintain themselves, but not being able to give such security as may be expected, on their coming to settle in any other place, it is enacted, That if any person who shall come into any parish or place there to reside, shall at the same time procure, bring, and deliver to the churchwardens or overseers where he shall come to inhabit, a certificate, under the hands and seals of the churchwardens and overseers of any other parish, or the major part of them, or of the overseers where there are no churchwardens; to be attested by two or more credible witnesses; thereby owning and acknowledging the person mentioned in the said certificate, to be an inhabitant legally settled in that parish, township, or place: Every such certificate, having been allowed of and subscribed by two justices of the place from whence the certificate shall come, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his family

a settlement; but yet he may come to settle upon a tenement of his own, though of ever so small a value. This man therefore, being for 5 years irremoveable from *Eastwoodhay*, has gained a good settlement there, and the order to remove him from thence must be quashed. *Stra.* 163.

M. 25 *G.* 2. The parishes of *Marden*, and *Barham*. Two persons jointly hired a house and land at *Marden*, for 16 *l.* a year, and jointly occupied the said house, tilled the land for the said year, and jointly paid the rent. It was urged that this gained no settlement to either of them. And a case was cited between *Croft* and *Bainford*, at *Durham* assizes, 1733, which was a joint taking of 14 *l.* a year, each paying separately, the landlord not caring to let to either singly. And the two judges (who were lord chief justice *Eyre* and *Reeves*) to whom it was referred, held it no settlement; because the statute requires the person's taking a tenement of 10 *l.* a year value: Whereas this practice of calling in a partner in the taking, would, if admitted to be equivalent to a sole taking, evade and frustrate the statute, and let in an indefinite number of families, all to be settled upon one tenement of 10 *l.* a year value. On the contrary it was argued, that each was legally tenant of the whole, and both liable to the landlord for the whole rent. By the court: This was not sufficient to gain a settlement. Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament in the present case con-

Two persons jointly hiring lands, &c. for 16 l. a year, no settlement for either.

siders only the right; which clearly is but to one half, and that half doth not amount to 10 *l.* a year. *Burrow's Settl. Cas.* 311.

A person on renting a house of 10 l. a year may let out a part and yet obtain a settlement.

Mich. 7 *Geo.* 3. The parishes of *Llanverras*, and *Northop*, *Evan Hughes*, the father of the pauper, rented a tenement of 10 *l.* a year, and paid the rent. He lived above 40 days in a part of it, which was of the yearly value of 40 *s.* only. And immediately after his taking the tenement, he let the residue to under-tenants, without residing thereupon at all himself. It was argued, that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10 *l.* a year value, and he ought to occupy the whole 10 *l.* a year. Otherwise, many families might be introduced into a parish, upon one such taking. It would quite evade the act, if the mere taking of a tenement would do; for then one would gain a settlement by taking, and another by occupying such tenement. But by the court. The act of parliament doth not require a person renting a tenement of 10 *l.* a year, to occupy it; it is enough, if he rents it, and resides 40 days in the parish. The ground the act goes upon, is a person's having credit sufficient to hire a tenement of such value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10 *l.* therefore they do not hereby gain a settlement. *Burrow's Settl. Cas.* 571.

An estate under 10 l. per annum gains a settlement.

East. 11 *An.* The parishes of *Harrow*, and *Edgeware*. A person settled at *Harrow*, went into *Edgeware* parish, and purchased a copy-hold

family as inhabitants of that parish, whenever they shall happen to become chargeable to, or be forced to ask relief of the parish, township or place, to which such certificate was given: And then and not before, it shall be lawful for such person, and his children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed, and settled in the parish or place, from whence such certificate was brought. *s.* 1.

And by the 9 & 10 *W. c.* 11. No person coming into any parish by such certificate, shall be adjudged to have procured a legal settlement in such parish, unless he shall really take a lease of a tenement of the yearly value of 10 *l.* or shall execute some annual office in such parish, being legally placed in such office.

Of settlement of a servant, &c. Of certificate man.

By the 12 *An. st.* 1. 18. *s.* 2. It is enacted that if any person shall be an apprentice bound by indenture, or be a hired servant, to any person who came into or shall reside in any parish, township or place, by means or licence of such certificate, and not afterwards having gained a legal settlement there; such apprentice or servant shall not be adjudged thereby to have any settlement in such parish or place; but shall have their settlements in such place as if they had not been apprentices or servants as aforesaid.

Witnesses to such certificate to make oath,

And by the 3 *G.* 2. *c.* 29. It is enacted, that the witnesses who attest the execution of the certificate, by the churchwardens and overseers of the poor, or one of the said witnesses,

neſſes, ſhall make oath before the juſtices of the peace who are to allow the ſame, that ſuch witneſſes did ſee the churchwardens and overſeers, whoſe names and ſeals are thereunto ſubſcribed, ſign and ſeal the ſaid certificate; and that the names of ſuch witneſſes are of their own proper hand writing: Which ſaid juſtices of the peace ſhall alſo certify, that ſuch oath was taken before them. And every certificate ſo allowed, and oath of the execution thereof ſo certified, ſhall be allowed in all courts whatſoever, as duly and fully proved, and ſhall be taken and received as evidence, without other proof. *ſ.* 8.

Concerning the ſettlement of apprenticos.

By the *ſtat.* 13 & 14 *C.* 2. *c.* 12. It is enacted, That on complaint by the churchwardens or overſeers, within 40 days after any perſon ſhall come to ſettle in any pariſh, in any tenement under 10 *l.* a year; two juſtices of the peace (one being of the *quorum*) may remove him to the place where he was laſt legally ſettled, either as a native, houſeholder, ſojourner, apprentice or ſervant, for the ſpace of 40 days at the leaſt.

And by the 1 *J.* 2. *c.* 17. The ſaid 40 days ſhall be reckoned, not from the time of his coming to inhabit, but from the time of his delivering notice in writing. And by the 3 *W.* *c.* 11. not from the time of delivering ſuch notice, but from the time of the publication of ſuch notice in the church.

But by the 3 *W.* If any perſon ſhall be bound apprentice by indenture, and inhabit in any town or pariſh, ſuch binding and in-

habitati

habitation shall be adjudged a good settlement, though no such notice in writing be delivered and published. *s.* 8.

By the 9 & 10 *W. c.* 11. A person coming into any parish by a certificate shall not be adjudged by any act whatsoever to gain a settlement in such parish, unless he shall *bona fide* take a tenement of 10 *l.* a year, or execute an annual office in such parish.

By the *stat.* 8 *An. c.* 9. & 9 *An. c.* 21. It is enacted, That the master shall pay a duty of 6 *d.* a pound, for 50 *l.* or under, and of 12 *d.* a pound for every pound above, of money, or of things not money according to their value, given with apprentices, and proportionably for greater or lesser sums.: Except money given with apprentices put out by the parish, or out of publick charities. The sum given to be written in the indenture in words at length. And besides the stamps before requisite, the indentures are to be stamped with another stamp, denoting the 6 *d.* or 12 *d.* a pound respectively: And if the sums are not truly inserted, or duties not paid or tendered, or indentures not stamped or tendered to be stamped within the time limited, such indentures shall be void.

Duty to be paid on money given with apprentices.

By the 31 *G.* 2. *c.* 11. No person who shall have been bound an apprentice, by any deed, or writing, not indented, being first duly stamped, shall be liable to be removed from the place where he was so bound and resident 40 days, by any order of removal, order of sessions, by reason only of such writing not being indented.

By

Statutes relating to settlement by service.

By the *stat*, 13 & 14 *C.* 2. *c.* 12. It is enacted, That on complaint by the churchwardens or overseers of the poor, within 40 days after any person shall come to settle in the parish in any tenement under 10 *l.* a year, two justices (one of the *quorum*) may remove him to where he was last legally settled, either as a native, housholder, sojourner, apprentice, or servant, for the space of 40 days at the least. But by the 1 *J.* 2. *c.* 17. 40 days from the time of delivering notice in writing.

And by the 3 *W.* *c.* 11. 40 days from the publication of such notice in the church.

But by the said act of the 3 *W.* If any unmarried person, not having children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published.

By the 12 *An. st.* 1. *c.* 18. It is enacted, That if any person after *June* 24, 1713, shall be hired servant with any person, who come into any parish, or place, by means or licence of a certificate, and not afterwards having gained a legal settlement in such parish or place; such servant shall not gain any settlement in such parish or place, on account of such hiring or service, but shall have his settlement as if he had not been hired servant to such person. *s.* 2.

By the 9 & 10 *W.* *c.* 12. No person who shall come into any parish, township, or place by a certificate shall be adjudged, by any act whatsoever, to have procured a legal settlement therein, unless he shall *bona*

take a lease of a tenement of 10 *l.* a year, or shall execute an annual office in the parish.

And by the 1 *J.* 2. *c.* 17. It is enacted, That the 40 days, intended by the act of 13 & 14 *C.* 2. *c.* 2. to make a settlement, shall be accounted from the time of his delivering notice in writing, of the house of his abode, and the number of his family, if he have any, to one of the churchwardens or overseers of the parish to which he shall remove. *s.* 3.

But by the 3 *W.* *c.* 11. The said 40 days continuance of such person, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he shall deliver, of the house of his abode, and the number of his family, if he have any, to a churchwarden or overseer. Which the said churchwarden or overseer shall read, or cause to be read, immediately after divine service, in the church or chapel, on the next Lord's day, when there shall be divine service in the same. And the said churchwarden or overseer shall register, or cause to be registred, the said notice in writing, in the book kept for the poor's account. *s.* 3.

And by the same statute *s.* 5. If any churchwarden or overseer of the poor shall refuse or neglect to read, or cause to be read such notice as aforesaid, he shall (on proof thereof by the oath of two witnesses before the justice of the peace) forfeit for every offence 40 *s.* to the party grieved, by distress, by warrant directed to the constable of the parish or place where the offender dwells; and

for

for want of diſtreſs, ſuch juſtice ſhall commit him to the common gaol for one month. And if any churchwarden or overſeer of the poor ſhall refuſe or neglect to regiſter, or cauſe to be regiſtered, ſuch notice, he ſhall, on the like conviction, forfeit 40 *s.* to the uſe of the poor where the offender dwells, to be levied as aforeſaid; and for want of ſufficient diſtreſs, the ſaid juſtice ſhall commit him as aforeſaid, for the time aforeſaid.

Settlement by paying pariſh rates.

Though by the 13 & 14 *C.* 2. *c.* 12. 40 days inhabitancy ſhall gain a ſettlement; and by the 1 *J.* 2. *c.* 17. ſuch 40. days ſhall be reckoned from the delivering of notice in writing; and by the 3 *W.* *c.* 11. from the publication of ſuch notice in the church.

Yet if a perſon who ſhall come to inhabit in any town or pariſh, ſhall be charged with and pay his ſhare, towards the publick taxes or levies, he ſhall be adjudged to have a legal ſettlement in the ſame, though no ſuch notice in writing be delivered and publiſhed. *W.* *c.* 11. *ſ.* 6.

But by the 9 & 10 *W.* *c.* 11. Thoſe perſons residing under a certificate, ſhall not gain a ſettlement by being rated to and paying any ſuch levies, taxes, or aſſeſſments.

But by 3 *W.* *c.* 11. *ſ.* 6. If any perſon who ſhall come to inhabit in any town or pariſh, ſhall for himſelf, and on his own account, execute any publick annual office or charge in the ſaid town or pariſh, during the whole year; he ſhall be adjudged to have a legal ſettlement therein, though no ſuch notice in writing be delivered and publiſhed.

By the 7 *G.* 3. *c.* 40. A person renting turnpike tolls, and residing in the toll house, shall not thereby gain a settlement. *s.* 46.

A person having an estate of his own, though under 10 *l.* a year, shall gain a settlement thereby, within the statute of the 13 & 14 *C.* 2.

Persons settled by his own estate.

By the 9 *G.* *c.* 7. It is enacted, That after *March* 25, 1723, no person shall be deemed to acquire any settlement in any parish, by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30 *l.* *bona fide* paid, for any longer or further time than such person shall inhabit in such estate, and shall then be liable to be removed to such parish or place, where he was last legally settled, before the said purchase and inhabitancy therein.

By the 13 & 14 *C.* 2. *c.* 12. Whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn or destroy, and when they have consumed it, then to another parish, and afterwards become rogues and vagabonds, it is enacted, That it shall be lawful, upon complaint made by the churchwardens or overseers, to any justice, within 40 days after any such person coming to settle in any tenement under the yearly value of 10 *l.* for by two justices (one whereof is of the *quorum*)

rum) of the division, where any person that is likely to become chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person to such parish, where he was last legally settled, unless he give sufficient security for the discharge of the said parish, to be allowed by such justices. *s.* 1.

And it is also enacted, by the same statute, that if such person shall refuse to go, or shall not remain in such parish where he ought to be settled, but shall return of his own accord from whence he was removed, one justice may commit him to the house of correction to be punished as a vagabond. *s.* 3.

And by the 17 *G.* 2. *c.* 5. All persons unlawfully returning to such parish from whence they have been legally removed by order of two justices, without bringing a certificate from the parish whereunto they belong, shall be deemed idle and disordered persons; and any one justice may commit them (being thereof convicted before him, by his own view, or by their confession, or by the oath of one witness) to the house of correction, to hard labour for any time not exceeding one month. *s.* 1.

And if the churchwardens and overseers of the parish whereto he shall be removed refuse to receive such person, and to provide work for him, as other inhabitants of the parish; any justice of the peace of that division shall bind any such officer, in whom there shall be default, to the assizes or sessions

ions, to be indicted for his contempt in that behalf. 13 & 14 *C.* 2. *c.* 12. *s.* 3.

By the 3 *W.* *c.* 11. It is enacted, That if any person be removed by virtue of this act, from one county, riding, city, town corporate, or liberty to another, by warrant of two justices; the churchwardens or overseers of the parish to which the said person shall be so removed, are required to receive the said person: and if they shall refuse, such person so offending shall (on proof thereof by the oath of two witnesses before one justice of the place to which the person shall be removed) forfeit for each offence 5 *l.* to the use of the poor of the parish from which such person was removed, to be levied by warrant to the constable of the parish where such offender dwells; and for want of sufficient distress, the said justice shall commit the offender to the common gaol for 40 days. 10.

By the 3 *G.* 3. *c.* 8. concerning officers, soldiers, and sailors, it is enacted, That such officers, soldiers, and mariners who have served since *Nov.* 22, 1748, and not discharged, and also their wives and children, may set up trades without any molestation by reason of their using of such trade; and shall they, or their wives or children, during the time they shall exercise such trades, be removable to their place of settlement, until they shall become actually chargeable. The justices of the peace, in the mean time, may summon and examine them, concerning their place of settlement; and shall give them

an attested copy of their affidavit, wh
shall be admitted as evidence in any gene
or quarter sessions.

No spiritous liquors shall be sold or u
in any workhouse, or house of entertainm
for parish poor. 24 *G.* 2. *c.* 40.

Servants in the *Foundling Hospital*, s
not, by such service, gain any settlement
the parish where it is situate. 13 *G.* 2
29.

Servants in the *Magdalen Hospital*, e
blished for the reception of penitent pro
tutes, shall not, by such service, gain
settlement in the parish where such hosp
is situate. 9 *G.* 3. *c.* 31.

Rates of Coaches, Chairs, Watermen.

Number of coaches and chairs.

BY 11 *G.* 3. *c.* 28. One thousand h
ney coaches, and four hundred c
are allowed in *London* and *Westminster*
suburbs of the same, or within the par
and places in the weekly bills of mortali

Licensed by commissioners.

Hackney coaches and chairs are to b
censed by commissioners, and upon eve
cence shall be reserved 5*s.* per week, pa
monthly for each coach, and 10*s.* *per* a
to be paid quarterly for every chair.
c. 23. *s.* 2, 3.

Any person driving a hackney coach, without licence, shall forfeit 5 *l.* and a chair 40 *s.* *An. c.* 23. *s.* 4.

Persons driving without licence.

Any coachman refusing to go at, or exacting more for hire than is limited, shall forfeit not exceeding 3 *l.* nor under 10 *s.* at the discretion of the commissioners, three or more whereof are to determine the same. *Geo. st.* 2. *c.* 57. *s.* 2.

Refusing to go for their fare, commissioners to levy penalties, &c.

The commissioners are impowered to make the laws for the regulating hackney coachmen, *&c.* And the rents or sums reserved, and all penalties shall be levied by the warrant of three commissioners, by distress and sale of goods in ten days.

Any person or persons not paying coachmen or chairmen their due fare, or cutting and defacing coaches, chairs, *&c.* a justice of the peace shall order them to make satisfaction; and on refusal may bind them over to the quarter sessions.

Not paying fare.

No hackney coachman, shall presume to take for his hire, within 10 miles of *London* or *Westminster*, above 10 *s.* for a day, reckoning 12 hours to the day, (this however is increased to 12 *s.* 6 *d.* per day, by 7 *Geo.* 3. *c.* 4. *s.* 17.) nor above 1 *s.* 6 *d.* for the first hour; and 1 *s.* for every hour after, *stat.* 6 *W. & M. c.* 22. *s.* 7. 9 *An. c.* 23. *s.* 6. nor no person be obliged to pay above 12 *d.* for the use of an hackney coach, for any distance not particularly set down in this act, 9 *An. c.* 23. so as the same do not exceed 1 mile, and 4 furlongs; nor above

The fares of hackney coachmen.

1 *s.* 6 *d.* for any distance, not exceeding t miles, *stat.* 9 *An.* *c.* 23. *s.* 7. A hackn coachman is obliged to go any where wit 10 miles of *London* and *Westminster*, by s 7 *Geo.* 3. *c.* 44. *s.* 12.

Places mentioned in the said plates.

The places and sums specified by the are 1 *s.* from any of the Inns of Court any part of St. *James's* or *Westminster* (exc beyond *Tothil-street*) and from the said In or thereabouts, to the *Royal Exchange*, and to the *Tower*, or *Bishopsgate* or *Aldg* 1 *s.* 6 *d.* and so from the said places to said Inns; And the like rates from and to place at the like distance.

Justices for Kent and Essex, authorized to put the hackney coach laws in execution within their jurisdiction. 4 Geo. 3. c. 36. s. 2.

By 4 *G.* 3. *c.* 36. *s.* 20. Every justic the peace for *Kent* and *Essex*, shall have same authority within his jurisdiction, to any of the laws in force for licensing and gulating the owners and drivers of hack coaches, against the drivers of licensed ha ney coaches, for any offence committed ag any of the said laws, as the *London*, *West ster*, *Middlesex* or *Surrey* commissioners, al men, or justices.

Number and distance of hackney coaches limitted in London.

By the 11 *G.* 3. *c.* 29. The number of ha ney coaches to stand and ply for hire, betw the end of *Freeman's-court*, *Cornhill*, an end of *Cornhill Eastward*, *London*, shall b more than 10 at a time; and from the of *Bucklesbury*, to the end of *King's-s Cheapside*, no more than five at a time, not to be nearer the one to the other 20 feet; and that all other coaches w the said city shall so stand or ply, (e the standing be against any dead wall) a

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distance of 8 feet at least from each other; and that every coach shall give way to all waggons, drays, carts, and other carriages to pass and repass, upon pain that every owner or driver of hackney coaches, which shall stand, or who shall ply in any place, where the number is limited, after such number shall be standing or plying therein, or shall stand nearer one another than hereby directed, or shall not, upon demand, give way for other carriages to pass and repass as aforesaid, shall pay 20 s. to be recovered and levied as any other penalty incurred by hackney coachmen, by any other law relating to them.

By the same statute, It is enacted, That within 7 days after, the owner of hackney coaches licensed shall leave at the office of commissioners at *Guildhall*, an account of the place of abode, and figure or number of each coach; and the owners of coaches already licensed shall leave the like account; and so every licensed hackney coachman shall, within days after his place of abode shall be changed, give the like account, on pain of the owner's forfeiting 20 s.

Places of abode, with figures of their coaches to be registered.

The commissioners are impowered to order persons licensed for using hackney coaches to provide check strings or wires, to be placed as the commissioners shall think most convenient; and every hackney coachman plying for hire, without such check string, shall forfeit 5 s.

Every hackney coach to have check strings on forfeiture of 5 s. s. 2.

In all cases where the owner of any licensed hackney coach shall provide check strings or

By law on the above clause.

wires to be placed in such part of every suc coach as to the said commissioners shall see most convenient, pursuant to an act of pa liament made and passed in the 11 G. 3. th driver of every coach shall, during the tim of his driving his fare, hold such check strin or wire in his hand, so that the same may u used for the accommodation of the fare, a cording to the intention of the said act; a in default thereof, being hereunto require the driver shall for every such offence, forf a sum not exceeding 10 s. at the discretion the said commissioners, or the major part them.

In pursuance of the *stat.* 1 *An.* c. 23. s. the commissioners have caused to be measu and rated several distances between the m noted parts of the town, as follows, *viz.*

One Shilling Rates for Coaches.

Rates settled by commissioners for coaches.

FROM *Westminster Hall* to *Marlbor street*, *Bolton-street*, *Soho-square*, *Bloo bury-square*, *Little Queen-street*, *Holborn*.

From St. *James's-gate* to *Queen Ann's-squ Westminster*, the nearest corner of *Red L square*.

From *Golden-square*, to *Red Lyon-square*.

From the *Haymarket Theatre* to *Red L square*, *Bloomsbury-square*, *Queen-square*, *W minster*.

From *Red Lyon-square* to *Guildhall*.

From the upper end of *Fetter-lane*, *Holb* to *Aldgate*.

From the *Royal Exchange* to *Hoxton-squ*

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From *Newgate* to the middle of *Greek-street*, near *Soho-square*.

From the *King's-head Tavern*, *Southwark*, to the sign of Sir *William Walworth*.

From *Gray's-Inn* to *Sadler's Wells*, by *Islington*.

From *Tom's Coffee-house* in *Russel-street*, *Covent Garden*, to *Newcastle-house*, near *Clerkenwell church*.

From *Temple Bar* to *Billingsgate*.

From *Aldgate* to *Shadwell-church*.

One Shilling and Six-penny Rates for Coaches.

From *Drury-lane* playhouse, to *Queen Ann's-square*, *Westminster*.

From *Westminster Hall* to St. *Paul's-church*, or *Queen's-square*, *Red Lion Fields*.

From St. *James's Gate* to *Hatton Garden*.

From the *New Exchange* in the *Strand* to the *Royal Exchange*.

From the *Haymarket* playhouse to *Hatton Garden*.

From *Westminster Hall* to *Red Lion-square*.

From St. *James's* to *Marybone-church*.

From the *Royal Exchange* to *Bloomsbury-square*, or to the watch-house at *Mile End*.

From the outside of *Aldgate* to *Stepney-church*.

From *Bedford-street*, *Covent Garden*, to *Coleman-street*.

From *Bread-street* to *Upper Moorfields*, and thence to *Hoxton-square*.

From *Austin Friars-gate* in *Broad-street*, to *Hart-street*, by *Bloomsbury-market*.

From St. *Martin's-lane* in the *Strand*, t *Gold-ſtreet* by *Wood-ſtreet*.

From the end of *Lombard-ſtreet*, next *Grace church-ſtreet*, to *Somerſet-houſe*.

From St. *Laurence's-church*, by *Guildhal* to *Brownlow-ſtreet* in *Drury-lane*.

From the *Royal Exchange* to *Newington church*, beyond *Southwark*.

From *Tom's Coffee-houſe*, by *Covent Garde* to *Royal Exchange*.

From *Stocks-market* to *Charing-Croſs*.

From *Aldgate* to *Ratcliff-Croſs*.

Numbers, &c.

All hackney coachmen not having tin plat with the number of their coaches, ſhall fo feit 5 *l.* Refuſing to permit any perſon t take the number, or giving a wrong numbe to forfeit a ſum not exceeding 40 *s.*

Coaches for funerals.

Only licenſed perſons ſhall ſtand, ply drive any coach, hearſe or coach horſes f hire; or ſhall let to hire any mourning coac or coach horſes, to attend on funerals, with the weekly bills of mortality, under the p nalty of 5 *l.* 1 *Geo. ſt.* 2. *c.* 57. *ſ.* 3.

One hundred and ſeventy-five coaches on are to ply on a *Sunday* by perſons appointe under the like penalty. 5 & 6 *W. & M.* 22. *ſ.* 18.

By the 7 *G* 3. *c.* 44. *ſ.* 18. Every hackn coachman, who ſhall drive with any hackn coach on the Lord's day, ſhall be liable to the like work, as ſuch coachman or his dri is by this or any former act compellable liable to do on any other day of the week.

Any hackney coachman being guilty misbehaviour in his employment, the co

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ssioners may either revoke his licence, or flict a penalty not exceeding 3 *l.* upon conviction, for every such offence, to be paid to e poor; and if any person so convicted, all not be able, or willing to pay the same, e shall be committed to *Bridewell* or some her house of correction, to be kept to hard bour for 30 days. 7 *G.* 3. *c.* 44. *s.* 16.

The commissioners may in all cases, where ey may now by law commit any offender, nvicted before them, to *Bridewell*, or any her house of correction, commit such offender, by warrant under their hands and als, immediately to *Bridewell*, or some her house of correction, to hard labour, r any time not exceeding one month, and ch offender shall also receive the correction the said house, if such commissioners shall so der. 10 *G.* 3. *c.* 44. *s.* 5. *see* 7 *G.* 3. *c.* 44. 15.

By the 10 *G.* 3. *c.* 44. *s.* 7. All the offences tended to be provided against by 7 *G.* 3. *c.* 44. by this present act, shall and may be heard d determined, not only by the said commissioners, but also by any justice or other gistrate, where such offence shall be committed, by such means as the penalties and feitures in 9 *An.* *c.* 23. are directed to be ied and recovered.

Turnpikes.

An act of the 13th of *George* the third, t explain, amend, and reduce into one a of parliament, the general laws now i being, for regulating the turnpike road in that part of *Great Britain* called *Eng land*; and for other purposes.

AS the laws for the general regulation turnpike roads within *England* are some respects ineffectual; it is therefore e acted, That all trustees appointed by acts parliament, for the repair of any turnpi road within *England*, or five of them, at so publick meeting, if they shall think prop at any gate or bar, which they have erecte or shall erect, for the receiving of tolls, upon any part of the road within the jur dictions, and at such a distance from a turnpike-bar or toll-gate as they shall thi expedient, may order to be erected a cra machine or engine, proper for the weighi of carts or carriages, conveying of any goo whatever; and, by writing signed by the may order all carriages, which shall p loaded through any such gate or bar, to weighed, together with the loading there and any five of them, may receive over tolls granted, 20*s.* for every 100 weight 112 pounds to the hundred, which ev waggon or cart hereafter described, toget with the loading thereof shall weigh, over weights allowed to each of them; *viz.* to ev wag

Trustees may erect a crane, machine, or other engine to weigh carriages.

waggon or four-wheeled carriage, having the fellies or rollers of the wheels of the breadth of ſixteen inches, eight tons in ſummer, and ſeven in winter; to every waggon or wain, having the axletrees thereof of ſuch different lengths, that the diſtance from wheel to wheel, of the nearer pair of the wheels, be not more than four feet two inches, to be meaſured at the ground, and that the diſtance from wheel to wheel of the other pair thereof be ſuch, that the fore and hind wheels of ſuch waggons and wains ſhall roll only one ſingle ſurface or path of ſixteen inches wide at the leaſt, on each ſide of the waggons or wains, and having the fellies thereof of the breadth of nine inches from ſide to ſide at the bottom or ſole thereof, ſix tons ten hundred in ſummer, and ſix tons in winter; to every waggon or four-wheeled carriage, having the ſole or bottom of the fellies of the wheels of the breadth of nine inches, ſix tons in ſummer, and five tons ten hundred in winter; to every cart, having the fellies of the ſame dimenſions, three tons in ſummer, and two tons fifteen hundred in winter; to every waggon, having the ſole or bottom of the fellies of the wheels of the breadth of ſix inches, four tons five hundred in ſummer, and three tons fifteen hundred in winter; and to every ſuch waggon ſo conſtructed as to roll and actually rolling a ſurface of eleven inches, by the wheels thereof, five tons ten hundred in ſummer, and five tons in winter; to every cart, having fellies of the wheels of the ſame dimenſions, two tons twelve hun-

Regulations for waggons having fellies ſixteen inches broad.

Concerning the diſtance of the wheels.

Further regulations concerning waggons.

Regulations concerning the wheels of carts.

dred in ſummer, and two tons ſeven hun-
dred in winter; to every waggon, havin
the ſole or bottom of the fellies of the wheel
of leſs breadth than ſix inches, three ton
ten hundred in ſummer, and three tons i
winter; and to every cart, having the fellie
of the wheels of the ſame dimenſions, on
ton ten hundred in ſummer, and one ton ſeve
hundred in winter; and it ſhall be deeme
ſummer from *May* 1, to *October* 31, bo
days incluſive, and winter from *November*
to *April* 30, both days incluſive: which ad
ditional toll ſhall be levied and recovere
upon any perſon liable thereto, in any of th
caſes aforeſaid, or his goods or chattels, wh
ſhall, after demand made thereof, refuſe
pay the ſame, in ſuch manner as any oth
toll, payable at the ſame turnpike-gate, is b
law to be levied and recovered; and th
money ariſing from ſuch duty ſhall be appli
to the repair of the turnpike road where th
ſame ſhall be collected.

The toll-gate keeper to weigh waggons and carts.

Sect. 2. The keeper of every ſuch to
gate, where ſuch weighing-engine ſhall
erected, ſhall weigh all ſuch waggons a
carts liable to be weighed by virtue of th
act, which ſhall paſs loaded through ſu
gates, and which he ſhall have reaſon to b
lieve carry greater weights than are allow
to paſs without paying the ſaid additio
toll; and if any gate-keeper ſhall perm
ſuch waggon or cart to paſs through ſu
toll-gate with greater weights than
allowed, without weighing the ſame, and
ceiv

ceiving ſuch additional tolls, he ſhall, for every offence, forfeit 5 *l.*

Sect. 3. Any truſtee, creditor, clerk, treaſurer, or ſurveyor, of ſuch turnpike road, if he ſhall ſuſpect any connivance or neglect, may cauſe any carriage which ſhall have paſſed through any toll-gate where ſuch weighing-engine ſhall be erected, and ſhall not have paſſed above 300 yards beyond ſuch toll-gate, to return to ſuch weighing-engine, and be there weighed with the loading which paſſed through ſuch gate in the preſence of ſuch truſtee, creditor, clerk, treaſurer or ſurveyor, upon requiring the driver thereof to drive ſuch carriage back to ſuch weighing-engine, and upon paying to him 1 *s.* for ſo doing; which ſum ſhall be returned to the perſon paying it, if, upon weighing ſuch carriage and loading, it ſhall be found above the weight allowed.

Carriages muſt return, if not paſſed 300 yards.

Sect. 4. The ſurveyors ſhall make convenient places for turning ſuch carriages upon every turnpike road, where ſuch weighing-engine ſhall be erected, within 300 yards of ſuch toll-gate, on each ſide thereof, if the ground will admit of it; and there ſhall be a liſt of the names of all the truſtees and creditors, and alſo of the clerk, treaſurer, and ſurveyor, of ſuch turnpike road, put up in the houſe where ſuch weighing-engine ſhall be placed, to be inſpected by the owner or driver of every carriage; and if the driver ſhall refuſe to return with his carriage to ſuch weighing-engine, he ſhall forfeit 40 s.; and any peace officer, or perſon preſent, may

Surveyors to make convenient places for turning.

drive ſuch carriage back to ſuch weighing-engine, in order to be weighed as aforeſaid.

Sect. 5. All acts made for repairing and amending turnpike roads, the truſtees whereof ſhall, within twelve calendar months after the commencement of the act, have cauſed to be erected and uſed thereupon ſuch weighing-engine, purſuant to the direction and true intent of this act, ſhall be continued, and be in full force, for five years, to be computed from the ſeveral expirations of all ſuch acts, and ſubject to all the tolls and duties, penalties, forfeitures, remedies, *&c.* reſpectively made, and enacted by any of the ſaid acts now or heretofore made, for repairing and amending turnpike roads.

Not to extend to waggons and carts employed in huſbandry.

Sect. 6. The regulations of weight before-mentioned ſhall not extend to any waggons, carts or carriages, employed in huſbandry, or carrying only manure for land, hay, ſtraw, fodder, or corn unthreſhed; and where lime or manure is or ſhall, by any particular turnpike act, be permitted to pass through any turnpike-gate toll-free, or upon paying leſs toll than is required to be paid for other goods, it ſhall be weighed at all weighing-engines upon ſuch turnpike road, together with the carriages in which ſuch lime or manure ſhall be conveyed, and ſhall pay ſuch additional toll for over-weight as before directed.

Sect. 7. The juſtices of the peace, within the limits of every county, *&c.* at any general quarter ſeſſions of the peace, upon com-

complaint made to them by a juſtice, or by any two creditors, or two truſtees of any turnpike road, within the limits of which they are creditors or truſtees, that ſuch turnpike road is much damaged by exceſſive weights being carried thereupon, and that no weighing engine hath been erected, or ordered by the truſtees of ſuch turnpike road to be erected upon the ſame, to ſummon the clerk, ſurveyor, and treaſurer, of ſuch turnpike road, to appear before the juſtices, at their next general quarter ſeſſions, to ſhew cauſe why weighing-engines ſhould not be erected at or near ſuch gates, upon ſuch turnpike roads as ſhall be deſcribed in ſuch ſummons; and if at ſuch ſubſequent ſeſſions the clerk, ſurveyor, and treaſurer, ſhall not appear before the juſtices at ſuch ſeſſions, or appearing, ſhall not ſhew ſufficient cauſe to the juſtices againſt the erecting of ſuch weighing-engines, the juſtices, if they think fit, may order engines to be erected upon ſuch turnpike road, at ſuch places as they ſhall think proper; a copy of which order ſhall be forthwith delivered to the clerk of ſuch turnpike road; and the truſtees are, at their next meeting, to be held after their clerk ſhall have been ſerved with ſuch copy of the order as aforeſaid, to contract with ſome proper perſon for erecting ſuch weighing-engine with all convenient ſpeed; and the treaſurer of ſuch road is to pay the expences attending the erecting of ſuch weighing-engine out of the money which ſhall then be

Juſtices at quarter-ſeſſions may order weighing engines to be erected, and to be paid from the tolls.

or

or next come into his hands from the tolls arising upon such road.

Where two or three turnpikes meet.

Sect. 8. When two or more turnpike roads meet at or near the same place, the trustees of such turnpike roads, may fix upon some convenient place to erect a weighing engine upon, which will accommodate all such turnpike roads; and, by agreement amonst themselves at such meeting, proportion the expences which may attend it, and likewise the money arising from forfeitures to be incurred for overweight at such weighing engine, amongst all such turnpike roads, in such manner as to them shall appear just and reasonable.

No composition unless the wheels be six inches.

Sect. 9. The trustees of any turnpike road, or their lessees, shall not make composition for tolls, in respect of any waggon, wain, cart, carriage, or horses, or beasts of draught, drawing the same, unless such waggons, wains, carts, and carriages, have the fellies of the wheels thereof of the breadth of gauge of six inches, or more.

Penalty for unloading before coming to the toll-gate.

Sect. 10. If any person shall unload goods from any cart, waggon or carriage, (except such carriages as are before excepted), at, or before the same shall come to any turnpike gate or weighing-engine, or shall load or lay upon such carriage, (except as aforesaid) after the same shall have passed any such turnpike or weighing-engine, any goods, or taken or unloaden from any horse, cart or carriages, belonging to, or hired or borrowed, by the same waggoner or carrier, in order to avoid the payment of the respective du

duties of 20 *s.* *per* 100: or if any person shall so unload, in order to carry considerable quantities of goods through any turnpike-gate, in one and the same day, and pay less toll at such turnpike-gate than would have been paid if such goods, wares or merchandises, had not been so unloaden; each person so offending in any of the cases aforesaid, and being thereof lawfully convicted before a justice of the peace for the limit where the offence shall be committed, upon the oath of credible witnesses, shall forfeit 5 *l.*; to be levied upon the goods and chattels of the owner of such cart, waggon or carriage; and each driver, not being the owner of such waggon or carriage, so offending, and being thereof convicted, shall be committed to the house of correction for one month.

Penalty of turning out of the road.

Sect. 11. If the owner of any waggon, cart or carriage, or person, being the driver thereof, travelling on any turnpike road where a toll-gate or weighing-engine is erected, shall turn out of the same into any other road, to avoid being weighed, or the paying of toll, and shall afterwards proceed with such carriage into and on the same turnpike road, every such owner, shall forfeit not exceeding 5 *l.* nor less than 20 *s.*; if he be the driver, and not the owner, not exceeding 50 *s.* nor less than 10 *s.* upon conviction for every offence.

Further regulations concerning the wheels of carriages.

Sect. 12. No carriage, liable to be weighed, shall pass along any turnpike road, being above 20 miles from the cities of *London* or *Westminster*, unless the same shall be constructed

ſtructed in ſuch manner, that no pair of ſuch wheels ſhall be wider than four feet ſix inches from inſide to inſide, to be meaſured on the ground, (except wheels having the ſoles of the fellies thereof of the breadth of nine inches, which ſhall be ſo conſtructed as to roll a ſurface of ſixteen inches; and the wider pair of ſuch wheels ſhall not be more than five feet eight inches from inſide to inſide, to be meaſured on the ground), and the diſtance from the centre of the fore-wheel to the centre of the hind-wheel of any waggon or four-wheeled carriage, not being uſed for the carriage of timber only, be not above nine feet, to be meaſured from the centre of the axletrees at the ends thereof, on pain of the owner or owners of every ſuch waggon, wain or cart, forfeiting the ſum of 5 *l.* for every offence: and the ſurveyor or gate-keeper of any turnpike road is required, at any turnpike or toll-gate, or other place upon the turnpike road, to meaſure ſuch waggon, wain or cart; and if any maſter or driver of a waggon, wain or cart, ſhall hinder, or refuſe to permit ſuch ſurveyor or gate-keeper, to meaſure ſuch waggon, wain or cart, he ſhall forfeit the ſum of 5 *l.*; and ſuch waggon ſhall not be permitted to paſs along any turnpike road.

Regulations reſpecting the number of horſes to draw waggons, carts, &c.

Sect. 13. No waggon, *&c.* having the ſole of the fellies of the wheels of the breadth of nine inches, ſhall paſs on any turnpike road with more than eight horſes; nor any cart or two-wheeled carriage, having wheels of the breadth aforeſaid, with more than five horſes; and the horſes in ſuch carriages ſhall draw in pairs, (except an odd horſe in a

tea

team, and except where the number of horses shall not exceed four) and no waggon, or four-wheeled carriage, having the sole of the fellies of the wheels of the breadth of six inches, shall pass on any turnpike road with more than six horses; and no cart, or two-wheeled carriage, having wheels of the breadth last-mentioned, shall be drawn on any turnpike road with more than four horses; and no waggon, wain, or four-wheeled carriage, having the fellies of the wheels of less breadth than six inches, shall be drawn on any turnpike road with more than four horses; and no cart, or two-wheeled carriage, having the fellies of the wheels of less breadth than six inches, shall be drawn on any turnpike road with more than three horses; and the owner of every such waggon or carriage, shall forfeit 5 *l.*; and the driver thereof, not being the owner, 20 *s.* to any person who shall sue for the same.

Sect. 14. All carriages moving upon rollers of the breadth of sixteen inches on each side thereof, with flat surfaces, are allowed to be drawn with any number of horses or cattle.

Carriages upon rollers not limited.

Sect. 15. No prosecution shall be commenced before a justice by way of information, for a forfeiture incurred by the owner or driver of a carriage, having a greater number of horses therein than are allowed by the act, unless such information be laid within three days after the offence committed; and no action shall be commenced for any such offence, unless the same be commenced within one calendar month after the offence

Information must be given in three days, and actions must be commenced within one month.

offence committed; and neither such information or action shall be laid, unless notice shall be given by the informer to the driver of such carriage, on the day upon which the offence shall be committed, of an intention to complain of such offence; and if it shall appear to the justice before whom such complaint shall be made, that the offender lives so remote as to make it inconvenient to summon him to appear before such justice, he may dismiss the complaint, and leave the informer to his remedy by action at law.

Sect. 16. It shall be lawful for any waggon or carriage, to be drawn with any number of horses upon any turnpike road where a weighing-engine shall be erected, provided such carriage shall be weighed at such engine: and in order that the owner or driver of such carriage may be furnished with proper evidence of the fact above-mentioned, if any prosecution should be commenced against him for using a greater number of horses than are allowed by the act, the person who shall have the care of such weighing-engine shall on demand made by the driver of such carriage, give to such driver a ticket, certifying that such carriage was weighed, and the weight thereof, with the loading.

Penalty for altering the distance of the wheels.

Sect. 17. If any person shall take off any horse or beast of draught, from a waggon or carriage, or shall alter the distance of the wheels thereof, before the same shall come to any of the gates or turnpikes, with intent to avoid any toll, forfeiture or penalty, for drawi

drawing with a greater nember of horſes or beaſts of draught, or any other manner than hereby allowed, each perſon ſo offending ſhall forfeit 5 *l.*

Sect. 18. If it ſhall appear to the truſtees of any turnpike road, that any part of the riſe of any hill upon ſuch turnpike road ſhall be more than four inches in a yard; the ſaid truſtees, or ſeven of them, may allow ſuch number of horſes as they ſhall judge neceſſary, not exceeding ten for waggons with nine inch wheels, nor ſix for carts with nine inch wheels; and not exceeding ſeven for waggons with ſix inch wheels, nor five for carts with ſix inch wheels; and not exceeding five for waggons with wheels of leſs breadth than ſix inches, nor four for carts with wheels of leſs breadth than ſix inches: and in caſe it ſhall appear to the ſaid truſtees that the whole riſe of any hill taken together, ſhall be more than four inches in a yard upon an average, they may allow ſuch number of horſes as they ſhall think fit to be uſed in ſuch waggons and carts, for the purpoſe only of drawing the ſame up ſuch hills, the length and extent of ſuch to be ſpecified in ſuch order of allowance, and the termination at each end to be marked by a poſt or ſtone, to be erected at ſuch boundaries; and the ſaid order of allowance ſhall be certified by the truſtees, or their clerk, to the next general ſeſſions: and if the facts, upon which the ſame is founded, ſhall, at the quarter ſeſſions, be proved upon the oath of credible witneſſes, to the ſatisfaction of the

Truſtees have power to permit more horſes to draw up a hill.

juſtices

juſtices on the bench, the ſaid order of allow-ance ſhall be confirmed, and filed among the records of the ſeſſions, by the clerk of the peace, or otherwiſe ſhall be vacated and quaſhed: and after ſuch confirmation and filing, no perſon ſhall be liable to any penalty or forfeiture for uſing ſuch number of horſes as ſhall be ſo allowed in drawing any wag-gon or cart up ſuch hills; and the ſaid juſ-tices, at any ſubſequent quarter ſeſſions of the peace, may re-conſider the order of al-lowance, and diſcharge the ſame.

Deep ſnow or ice a rea-ſonable ex-cuſe.

Sect. 19. If it ſhall appear, upon the oaths of credible witneſſes, to the ſatisfaction of a juſtice, or of a court of juſtice, that any waggon, cart or carriage, could not, by rea-ſon of deep ſnow or ice, be drawn with the reſpective weights, and by the number of horſes or beaſts of draught allowed; the ſuch juſtices or court are required to ſtop all proceedings before them for the recovery of any penalty incurred by a greater number of horſes than are allowed.

Waggons or carts drawn by horſes in pairs.

Sect. 20. Any waggon or cart having the bottom of the fellies of the wheels of less breadth than nine inches, may paſs up any turnpike road, or through any turnpike gate or bar, if the ſame ſhall be drawn by horſes in pairs; except ſuch waggons, wag-or carts, having the fellies of the wheels of a breadth of ſix inches, as ſhall be authorized to be drawn in any other manner by order of the truſtees of any turnpike road within their diſtrict, made at a publick meeting, con-ſiſting of ſeven truſtees or more; which

der the ſaid truſtees may revoke at any ſubſequent meeting, and afterwards make a new one, if they ſhall think fit, for the ſame purpoſe, and fixed in writing upon every tollgate within ſuch diſtrict, and except carriages drawn by two horſes only.

Sect. 21. In caſe any perſon ſhall, upon a turnpike-road, drive any waggon or carriage, not being marked according to the directions of the act, or drawn by more than the number of horſes or beaſts of draught hereby authoriſed, any conſtable, tithingman, ſurveyor or other perſon, may apprehend and take ſuch perſon before a juſtice of the peace, and upon conviction thereof, every ſuch perſon ſhall forfeit, for every offence, not exceeding 5 *l.* nor leſs than 10 *s.* at the diſcretion of the juſtice.

Conſtable, tithingman, &c. may apprehend offenders.

Sect. 22. The truſtees appointed by virtue of any acts of parliament made for repairing and amending particular roads, or any five of them, within their diſtricts, are authoriſed, at the firſt meeting after the commencement of the act, to mitigate the high and extraordinary tolls and duties, in reſpect of ſuch waggons or other wheeled carriages only, having the wheels of the breadth or guage of ſix inches, in ſuch manner as no greater toll or duty, in reſpect to waggons, be demanded or taken for the ſame, than is provided and directed by the ſaid acts to be paid and taken for waggons and four-wheeled carriages, drawn by four horſes or beaſts of draught; and no greater ſhall be demanded or taken for carts, having

Truſtees may mitigate tolls.

the fellies of their wheels of the breadth o
ſix inches, than is provided by ſuch acts to
be taken for carts drawn by three horſes; and
the truſtees within their diſtricts, or any five
of them, are hereby required to give direc-
tions in writing to the collectors within their
diſtricts, to take and receive ſuch tolls, and
no other.

What carriages are to pay double tolls.

Sect. 23. The truſtees may demand and
take, for every waggon, wain, cart or car-
riage, having the fellies of the wheels thereo
of leſs breadth than ſix inches from ſide to
ſide at the leaſt, at the bottom thereof, and
for the horſes or beaſts of draught drawing
the ſame, one half more than the tolls which
ſhall be payable for the ſame; and for every
waggon, wain, cart or carriage, having the
fellies of the wheels thereof of leſs breadth
than ſix inches from ſide to ſide, at the leaſt
at the bottom or ſole thereof, and for the
horſes or beaſts of draught drawing the ſame
after *September* 29, 1776, double the tolls or
duties which ſhall be payable for the ſame by
any act made for amending or repairing turn-
pike roads, before any ſuch waggon, wain
&c. ſhall be permitted to paſs through any
turnpike gate or bar where tolls ſhall be pay-
able by virtue of ſuch acts.

Who are exempted from toll, or to pay leſs tolls than others.

Sect. 24. No perſon ſhall, by virtue of the
ſaid acts, have any benefit or advantage of an
exemption from toll, or pay leſs toll in re-
ſpect of any waggon, wain, cart or carriage
or horſe drawing the ſame, and carrying any
particular kind of goods, than other carriages
of the like nature, carrying other goods
ou

ought to pay, unless such waggon, wain, cart or carriages, have the sole of the bottom of the fellies of the wheels of the breadth or guage of six inches, or upwards, (except carts and carriages employed in carrying corn or grain in straw, hay, straw, fodder, dung, lime, for the improvement of land, manure, or implements of husbandry only); but the toll required by the acts, together with the additional tolls required to be taken for every such waggon, wain, cart or carriage, having the sole of the fellies of the wheels of less breadth than six inches, and for horses or beasts of draught, drawing the same, (except as before excepted), shall be paid in the same manner, as if no exemption, or less toll, had been enacted or allowed by any of the acts, and as fully as all waggons, wains, carts and carriages, and horses drawing the same, ought to pay, which are not intituled to any exemption from toll, in the whole or part; or to pay a less toll than other waggons, wains, carts and carriages.

Tire upon the fellies to lie flat.

Sect. 25. No person shall take the benefit of such exemptions, or have the privilege before given of compounding, in respect of any carriage having the fellies of the wheels thereof of the breadth of six inches, or upwards, unless the fellies, and the tire upon such fellies, shall lie flat.

Carriages moving upon rollers to pay no toll till Michaelmas 1774.

Sect. 26. All waggons, carts or carriages, moving upon rollers, of the breadth of sixteen inches on each side thereof, with flat surfaces, shall be permitted to pass upon any turnpike road toll-free, for one year, to be

Afterwards only half toll.

computed from *Michaelmas* 1773; and after the expiration of the said term, all such waggons, *&c.* shall pass upon any turnpike road through any toll-gate or bar, upon paying only so much of the tolls as shall not exceed one half of the full toll or duty, having the fellies of the wheels of the breadth of six inches from side to side, or for the horses or beasts of draught drawing the same, and not rolling a surface of sixteen inches on each side; and no more than half toll shall be paid in respect of waggons having the fellies of the wheels of the breadth of nine inches, and rolling a surface of sixteen inches on each side thereof, after the commencement of the act.

Not to extend to a chaise-marine, coach, landau, berlin, chariot, chaise, calash, chair, hearse, or ammunition-carriage.

Sect. 27. Nothing contained shall extend to any chaise-marine, coach, landau, berlin, chariot, chaise, chair, calash, or hearse, or to the carriage of ammunition or artillery as shall be for his majesty's service, or to any cart drawn by one horse, or two oxen, and no more; or to any carriage, having the sole of the fellies of the wheels thereof of the breadth of nine inches, which shall be laden with one block of stone, one piece of marble, one cable rope, one piece of metal, or one piece of timber.

Penalty of taking fraudulent exemptions.

Sect. 28. If any person shall take the benefit of exemptions, in any fraudulent manner, shall forfeit for every offence, not exceeding 5*l.* or less than 40*s.*

Trustees, or any seven of them may reduce or advance the tolls.

Sect. 29. The trustees now in trust for repairing and amending particular roads, are impowered, at a meeting to be held for that purpose, of which one calendar month's notice shall be given in writing, to be affixed

ll turnpike-gates which ſhall be then erected pon ſuch roads, and in ſome publick news aper circulated in that part of the country, rom time to time, may leſſen or reduce ny of the tolls granted by the ſaid acts, uring ſuch time as the truſtees, or any ſeven f them, ſhall think proper; and at any eeting, from time to time, if they ſhall ſee ecaſion, to advance tolls ſo leſſened to any m, not exceeding the ſeveral rates granted y ſuch acts.

Sect. 30. Where the money borrowed on e credit of the tolls, ſhall not have been id, no ſuch tolls ſhall be leſſened without e conſent of the perſons intitled to five-ths of the money remaining due upon ſuch lls.

Sect. 31. The truſtees of any particular turn-ke act, or ſeven of them, at a public meeting, y let to farm the tolls of the gates erected on their turnpike roads, in the manner after entioned. The truſtees ſhall cauſe notice to given of the time and place for letting the e at leaſt one month before the day to be ointed for that purpoſe, by fixing the ſame on every toll-gate belonging to ſuch turn-e road, and alſo upon the market-croſs of e market town neareſt to the place where e tolls are to be let, and alſo in ſome pub-k news paper circulated in that part of the ntry, and ſpecifying in ſuch notice the which the tolls produced in the preceding r, clear of the ſalary for collecting the e, in caſe any hired collector was appoint-and they will let ſuch tolls by auction to

Truſtees may let to farm the tolls.

giving public notice that they will be let by auction to the beſt bidder.

the beſt bidder, on his producing ſufficien
ſureties for payment of the money, monthl
or quarterly, as ſhall be required by the tru
tees; and they will be put up at the ſu
which they were let for in the preceding yea
clear of the ſalary of the collector; and
prevent fraud, or undue preference in the le
ting thereof, the truſtees are required to pr
vide a glaſs with ſo much ſand in it as w
run from one end of it to the other in o
minute; which glaſs, at the time of letti
the ſaid tolls, ſhall be ſet upon a table, a
immediately after every bidding, the glaſs ſh
be turned, and as ſoon as the ſand is run ou
it ſhall be turned again, and ſo for thr
times, unleſs ſome other bidding intervene
and if no perſon ſhall bid until the ſand ſh
have run through the glaſs for three tim
the laſt bidder ſhall be the farmer of the tol
and ſhall forthwith enter into a proper agre
ment for the taking thereof, and paying t
money at the times ſpecified in ſuch notice,
as ſhall be agreed upon between him and
truſtees; and in caſe no bidder ſhall off
the truſtees may appoint a collector of ſu
tolls, or fix ſome future day for the letti
thereof, as they ſhall judge moſt proper, up
giving ſuch notice thereof, and may, in t
caſe, put them up at ſuch ſum as they ſh
think fit: and if the perſon who ſhall be
farmer of ſuch tolls ſhall take a greater
leſs toll from any perſon than what are aut
riſed by this or the turnpike act, he ſhall,
every ſuch offence, forfeit 5 *l.* and ſhall
forfeit the contract for renting the tolls.

Laſt bidder before the ſand is out ſhall be the farmer.

Penalty for taking a greater or leſs toll than is allowed

he truſtees ſhall think fit to vacate the ſame; nd every other gate-keeper authoriſed to col- ect the tolls, who ſhall take a greater or leſs oll than as aforeſaid, ſhall, for every offence, rfeit 40 s.

Sect. 32. The ſurveyors of all turnpike ads ſhall cauſe the ſtatute-duty required by e turnpike acts, and the compoſitions ari- ng from the ſame, to be performed, and ex- nded, upon the turnpike road lying within e pariſh, townſhip or place, from which ch duty ſhall be required, and not elſe- here, and ſhall forfeit 40 s. for every miſ- plication thereof; and where there are two more turnpike roads under ſeveral acts thin the ſame pariſh, townſhip or place, d the ſtatute-duty directed by ſuch acts, ll exceed three days duty in the whole; n it may be lawful for two or more juſtices, ome ſpecial ſeſſions, to proportion the ſta- e-duty betwixt ſuch turnpike roads and the er highways in ſuch pariſh, townſhip or ce as they ſhall think fit; the juſtices pre- uſly ſummoning the clerks and ſurveyors ſuch turnpike roads, and likewiſe the ſur- ors of the highways, for ſuch pariſh, nſhip or place, who are required to attend juſtices upon ſuch ſummons. Regulations concerning ſtatute duty.

Sect. 33. When the inhabitants of any pa- , townſhip or place, ſhall be indicted or ented for not repairing any highway, be- turnpike road, and the court before whom indictment or preſentment ſhall be pre- d ſhall impoſe a fine for the repair of ſuch , the ſame ſhall be proportioned, together

with the costs attending the same, between the inhabitants of such parish, township or place, and the trustees of such turnpike road in such manner as to the court shall seem just and such court may order the treasurer of such turnpike road to pay the sum so proportioned for such turnpike road out of the money then in his hands, or next to be received by him in case it shall appear to such court, from the circumstances of such turnpike revenues, that the same may be paid without endangering the security of the creditors who have advanced their money upon credit of the tolls to be raised thereupon; which order shall be binding upon such treasurer.

Twenty one days publick notice to be given of erecting a toll gate.

Sect. 34. No toll-gate shall be erected on the side of any turnpike road, unless the same ordered by the trustees at a meeting, of which twenty-one days publick notice shall have been given in writing, affixed upon all the toll-gates erected on such roads, and also in some publick news-paper circulated in that part of the country, specifying the place where such side-gate is proposed to be erected and unless nine trustees at least (being a majority of those present) shall sign the said order at such meeting; and no person shall be liable to pay toll at any toll-gate erected across or on the side of any turnpike road, or subject to any penalty for a carriage, horse or beast, which shall only cross such road, and shall not pass above 100 yards thereon, except over some bridge erected at a considerable expence by the trustees of such turnpike road.

Sect. 35. If any person shall agree to advance any sum to be employed in the making or repairing any turnpike road, and shall subscribe his name to any writing for that purpose, such person shall be liable to pay every sum so subscribed, according to the purport of such writing; and in default of payment thereof within twenty-one days after the same shall become payable, and shall be demanded by the person to whom the same is made payable by such writing; or if no person be named for that purpose by the treasurer of such turnpike or intended turnpike road, it may be lawful for every treasurer, or other person, to sue for and recover the same.

Subscribing to advance money for a turnpike road shall be binding.

Sect. 36. On every turnpike road, where a sufficient quantity of stone, gravel, chalk or materials, cannot be provided and carried by the labourers and teams required to perform statute-duty upon the same, the surveyor, with the approbation of the trustees, shall contract for the getting and carrying thereof, at some time and place to be fixed for that purpose, of which ten days notice in writing shall be given, by fixing the same on the door of the church or chapel of such parish, township or place, or, if there be no church or chapel, at the most publick place there; which notice shall specify the work to be done, and the time and place for letting thereof: and if any surveyor shall have any share or interest, directly or indirectly, in such contract, or in any other bargain, for work or materials to be made or provided, upon, for, or on account of any of the highways, roads, bridges

Surveyor may contract for materials for the road, but must not be concerned in any bargains on his own account.

or works, under his care or management; o
ſhall, upon his own account, directly or in
directly, let to hire any team, or diſpoſe o
any timber, ſtone or materials, to be uſed i
making or repairing ſuch roads, bridges o
works, unleſs a licence in writing for the ſal
of ſuch materials, or for letting to hire ſuc
team, be firſt obtained from the truſtees, h
ſhall forfeit for every offence 10*l.* and be fo
ever after incapable of being employed as
ſurveyor, under the authority of this or an
other act.

Penalty for ſuffering poſts, heaps of ſtones, &c. to lie on the road.

Sect. 37. If the ſurveyor ſhall knowingl
ſuffer to remain, for four days, in any pa
thereof, within ten feet on either ſide of th
middle of ſuch road, any poſt, heap of ſton
or earth, ſet up or raiſed in or above the ſu
face of the road, by which the paſſage m
be obſtructed, impeded, confined or ſtraitene
(other than poſts, blocks, ſtones or banks
earth, fixed in the ground or raiſed, for f
curing horſe or foot roads, or paſſages f
water, and alſo direction-poſts and ſtones
ſuch ſurveyor, or other perſon, ſhall forf
40*s.*

Penalty of encroaching upon turnpike roads.

Sect. 38. If any perſon ſhall incroach,
making any hedge, ditch or fence on a
turnpike road, within thirty feet from t
middle thereof; or ſhall plough, harrow
break up the ſoil of any land or ground;
in ploughing or harrowing the adjacent lan
ſhall turn his plough or harrow in or up
any land or ground within the diſtance of
teen feet from the centre of any turnp
road; every perſon ſo offending ſhall for

for every offence 40 *s.* to ſuch perſon as ſhall make information of the ſame: and the truſtees who have the care of ſuch road, or any five of them, may cauſe ſuch hedge, ditch or fence to be taken down or filled up, at the expence of the perſon to whom the ſame ſhall belong; and any juſtice, upon the proof thereof to him made upon oath, may levy as well the expences of taking down ſuch hedges, as the ſeveral penalties impoſed, by diſtreſs and ſale of the offender's goods and chattels, rendering the overplus to the owner on demand.

Penalty for damaging bridges, mile-ſtones, &c.

Sect. 39. Foraſmuch as ſeveral evil-diſpoſed perſons do or may break, damage or throw down the ſtones, bricks or wood, fixed upon the parapets or battlements of bridges, and may pull down, deſtroy, obliterate or deface any mile-ſtone or poſt, graduated or direction poſt or ſtone, erected, or to be erected, upon any turnpike road: for prevention thereof, every perſon who ſhall be guilty of ſuch offence, ſhall forfeit, for every of the ſaid offences, not exceeding 5 *l.* nor leſs than 10 *s.* and in default of payment therereof, ſhall be committed to the houſe of correction, there to be whipped and kept to hard labour, not exceeding one month, nor leſs than ſeven days.

Penalty for riding in a carriage, no having another perſon to drive.

Sect. 40. If the driver of any cart, car, dray or waggon ſhall ride upon any carriage in a ſtreet or highway, not having ſome other perſon on foot, or on horſeback, to guide the ſame, (ſuch carriages as are conducted by ſome perſon holding the reins of the horſes drawing the ſame excepted); or if the driver of any

carriage, on any part of a ſtreet or highway, ſhall, by negligence or wilful miſbehaviour, cauſe any hurt or damage to any perſon or carriage paſſing or being upon ſuch ſtreet or highway; or ſhall quit the highway, and go on the other ſide of the hedge or fence incloſing the ſame; or wilfully be at ſuch diſtance from ſuch carriage, or in ſuch a ſituation, whilſt it ſhall be paſſing upon ſuch highway, that he cannot have the direction and government of the horſes or cattle drawing the ſame; or ſhall, by negligence, or wilful miſbehaviour, prevent, hinder, or interrupt the free-paſſage of any other carriage or of his majeſty's ſubject, on the highways; or if the driver of any empty or unloaded waggon, cart or carriage, ſhall refuſe to turn aſide and make way for any coach, chariot, chaiſe, loaded waggon, cart, or loaded carriage; or if any perſon ſhall drive any ſuch coach, poſt chaiſe or carriage, let for hire, or waggon, wain or cart, not having the owner's name, as required, painted thereon; or ſhall refuſe to diſcover the true chriſtian and ſurname of the owner of ſuch carriage; every ſuch driver ſo offending in any of the caſes aforeſaid, ſhall forfeit not exceeding 10*s.* in caſe ſuch driver ſhall not be the owner of ſuch carriage; and in caſe the offender be the owner of ſuch carriage; then a ſum not exceeding 20*s.*; and in either of the ſaid caſes ſhall, in default of payment, be committed to the houſe of correction not exceeding one month, unleſs ſuch forfeiture ſhall be ſooner paid; and every ſuch driver offending in either

Unloaded carriages to turn aſide for loaded carriages.

of the said cases, may, by authority of the act, with or without any warrant, be apprehended by any person who shall see such offence committed, who shall be immediately delivered to a constable, or peace officer, in order to be conveyed before some justice, to be dealt with according to law; and if such driver, in any of the cases aforesaid, shall refuse to discover his name, the justice before whom he shall be taken, or to whom such complaint shall be made, may commit him to the house of correction for any time not exceeding three months, to proceed against him for the penalty aforesaid, by a description of his person, and the offence, and expressing in his proceedings, that he refused to discover his name.

Driver refusing to discover his name.

Sect. 41. The trustees, appointed to execute any act made for the repair of any turnpike road, shall direct the surveyor of such turnpike road, where several highways meet, and there is no sufficient direction-post or stone already erected, forthwith to erect, in the most convenient place where such ways meet, a stone or post, with an inscription thereon, in large letters, containing the name and distance from, the next market town, or other considerable place, to which the highways lead; and also at the several approaches or entrances to such parts of any highways as are subject to deep or dangerous roads, graduated stones or posts, denoting the depth of water in the deepest part of the same, and likewise such direction-posts or stones, as the trustees shall judge to be necessary

Trustees to shall direct the surveyor to erect direction posts, &c where necessary.

ceſſary, for the guiding of travellers in the beſt and ſafeſt tract through the ſaid floods or waters; and ſhall order the ſurveyor to erect mile-ſtones or poſts upon ſuch turnpike road with proper inſcriptions and figures thereon denoting the names and diſtances from the principal towns or places on each road, and from time to time, to repair ſuch ſtones and poſts, and keep and continue legible the inſcriptions thereon; and the ſurveyor ſhall be reimburſed the expences, out of the tolls and duties granted by ſuch acts; and in case any ſurveyor ſhall, by the ſpace of three months after ſuch direction to him given, neglect to cauſe ſuch ſtone or poſt to be fixed or repaired, every ſuch offender ſhall forfeit 20 s.

Alſo mile-ſtones with inſcriptions thereon.

Sect. 42. If any perſon ſhall pull down, pluck up, or deſtroy any turnpike-gate, or any poſt, rail, wall, chain, &c. belonging to a turnpike-gate, or any crane, machine, &c. or ſhall forcibly reſcue any perſon, being lawfully in cuſtody of any officer, for any of the offences before mentioned; then any perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall be tranſported for ſeven years, or ſhall be committed to priſon for not exceeding three years, at the diſcretion of the judge or court before whom ſuch offender ſhall be tried; and an indictment for ſuch offences may be enquired of, examined, tried, and determined, in any adjacent county within *England*, in ſuch manner and form, as if the fact had been therein committed.

Pulling down or deſtroying turnpike gates, &c. tranſportation for ſeven years.

Sect. 43. The inhabitants of every hundred in *England*, within which such offences shall be committed, by pulling down, or destroying any such turnpike-gate, or such post, rail, *&c.* belonging to any turnpike-gate, shall make full satisfaction for the damages thereby suffered; and the damages may be recovered by action of debt, bill, plaint or information, in any court of record in the name of the clerk of the peace of the county wherein such offences shall be committed, without naming the christian or surname of the clerk; and the said damages shall be to the only use and behoof of the trustees of such turnpike road, where the offence shall have been committed; and all the inhabitants of such hundred shall be rateably and proportionably taxed towards an equal contribution, for the relief of such inhabitants against whom execution for such damages shall be had and levied: provided, that upon conviction of such offender, within twelve months after the offence committed, any hundred, or the inhabitants thereof, liable to make, and having made such satisfaction, shall be repaid the sums they have so paid out of the tolls of the turnpike where such offence was committed.

The inhabitants of the hundred to satisfy for the damages.

All the inhabitants to be rateably taxed.

Sect. 44. No person shall be qualified, or capable of acting as a trustee, unless he shall be in his own right, or in the right of his wife, in the actual possession of lands and tenements of the clear yearly value of 40 *l.*; or possessed of a personal estate to the value of 800 *l.*; or shall be heir-apparent of a per-

Qualification for a trustee.

ſon poſſeſſed of an eſtate in land of the clear yearly value of 80 *l.*; and unleſs he hath taken, or ſhall, (not being ſuch heir apparent) before he acts as ſuch truſtee, ſubſcribe the oath following before two of the truſtees.

I A. B. *do ſwear, That I truly and* bona fide *am, in my own right, or in the right of my wife, in the actual poſſeſſion and enjoyment, or receipt of the rents and profits of lands, tenements, or hereditaments, of the clear yearly value of forty pounds; or poſſeſſed of, or intitled to, a perſonal eſtate to the value of eight hundred pounds,* (as the caſe may be).

So help me *GOD.*

If an unqualified perſon acts he forfeits 50 l.

Sect. 45. And if any perſon ſhall preſume to act contrary to the true intent hereof, he ſhall forfeit 50 *l.* to any perſon who ſhall ſue for the ſame; and ſuch perſon ſo ſued ſhall prove that he is qualified as above, or otherwiſe ſhall pay the ſaid 50 *l.* without any other proof or evidence on the part of the plaintiff than that ſuch perſon hath acted as a truſtee in the execution of ſuch act.

When clerks, treaſurers and ſurveyors, are to deliver up their accounts.

Sect. 46. All clerks, treaſurers, ſurveyors, and officers, appointed by any act made for the repair of turnpike roads ſhall, within ten days after notice in writing to them given by the truſtees, at a meeting held purſuant to ſuch act, produce and deliver up to ſuch truſtees all books, accounts, or writings, relating to the execution of ſuch offices, which ſhall

ſhall be in their cuſtody or power; or for every neglect or refuſal, forfeit 20 *l.*

Sect. 47. No perſon who ſhall keep a victualling-houſe, ale-houſe, or houſe of publick entertainment, or who ſhall ſell wine, cyder, beer, ale, or ſtrong liquors, by retail, ſhall be capable of acting as a truſtee, or of enjoying any place of truſt or profit under the truſtees, or of collecting the tolls, or who ſhall ſell wine, beer, cyder, ale, or ſtrong liquors, by retail; but no ſuch perſon ſhall be precluded from farming ſuch tolls.

Victuallers, alehouſe-keepers, &c. not to be truſtees, or have any other place of truſt.

Sect. 48. The truſtees, or any five of them, at a publick meeting, may direct proſecutions by indictment againſt offenders, for any nuiſance done, or committed, on any of the turnpike roads under their care, the expence to be allowed by ſuch truſtees.

Truſtees may direct proſecutions for nuiſances.

Sect. 49. All juſtices before whom there ſhall be any information or proceeding for any penalty or forfeiture, where information or conviction ſhall be ſet up or inſiſted upon, by way of defence, or to defeat any information or proceeding, or any forfeiture inflicted as aforeſaid, may examine into the real merits of ſuch information, proceeding, or conviction; and, if thereupon it ſhall appear that the ſame was not done, made, or proſecuted effectually, may recover and apply the penalty for the real ends and purpoſes for which ſuch penalties were enacted; but to favour the offender, ſuch information or conviction ſhall be deemed to be fraudulent, and null, and void; and ſuch juſtice ſhall proceed

Fraudulent information, by way of defence, is void.

ceed to determine and convict, as if no information or conviction had been made, prosecuted, or obtained.

Where a sufficient number of trustees shall not meet.

Sect. 50. Where a sufficient number of trustees shall not meet on the day appointed for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, by which means the intent of the said acts may be frustrated; the trustees present, or the major part of them, or in case no trustee shall be present, their clerks may cause notice in writing to be affixed on all turnpike-gates which shall be then erected on the roads, or if no turnpike-gate shall be then erected, may cause the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest to which the roads directed to be repaired do lie, and also in some publick news-paper circulated in that country, at least ten days before the intended meeting, appointing such trustees to meet at such place where the preceding meeting was appointed to have been held, or at the place directed for the first meeting of such trustees, if no such preceding meeting shall have been held; and the trustees, when met, in pursuance of such notice shall proceed and carry such acts into execution, in the same and as ample a manner to all intents and purposes, as they might have done, if no such neglect had happened.

Meeting not to be adjourned for more than three months.

Sect. 51. No meeting of such trustees shall be adjourned for any longer time than three calendar months from the day on which such

ſuch adjournment ſhall be made; and no buſineſs ſhall be proceeded upon by the truſtees, at any meeting before ten in the forenoon; and no adjournment ſhall be made to any hour later than two in the afternoon; and every act agreed upon at any meeting ſhall be ſigned at the ſaid meeting by a competent number of truſtees, or otherwiſe every ſuch meeting, adjournment and act, ſhall be void and of none effect.

Where truſtees exceed their power.

Sect. 52. If the truſtees ſhall abuſe or exceed their power, by erecting or continuing gates or turnpikes where they have not power, the juſtices of the limit, in their general quarter ſeſſions aſſembled, upon complaint of ſuch abuſe or exceſs of power, in a ſummary way, may hear and determine the ſame, and thereupon order the ſheriff of the county, who is required to execute ſuch order, to remove ſuch gates or turnpikes.

Mortgagee to give in his account when required by five truſtees.

Sect. 53. Every mortgagee that hath taken or been in poſſeſſion, or hereafter ſhall take or be in poſſeſſion of any toll gate or bar, or of any lands or tenements, the rents and profits whereof are appropriated to the repair of a part of any turnpike road, ſhall, within fourteen days after he ſhall have received notice in writing from the truſtees, upon oath, give an exact account, in writing, to ſuch truſtees, or to any perſon appointed by them, to be named in ſuch notice, of all monies received by ſuch mortgagee at ſuch toll-gate or otherwiſe, and of what he has expended in keeping or repairing the ſame; or forfeit to the truſtees, for every refuſal or omiſſion, 10 *l.*

Sect.

Mortgagee not to keep possession after his demand is satisfied.

Sect. 54. If any mortgagee shall keep possession of a toll-gate, and receive the tolls thereat, or of such rents or profits as aforesaid, after he shall have received the full sum due on his mortgage, and the interest, with costs, he shall forfeit double the sum he shall have received above the sum due, with treble costs of suit.

Two trustees, on the death of a toll-gatherer, may appoint another.

Sect. 55. Two trustees of any turnpike road, upon the death of any toll-gather, may appoint some other fit person until the next meeting of the trustees: and if any toll-gatherer who shall be discharged shall refuse to deliver up the possession of the house, *&c.* within two days after notice of his discharge shall be given to him or left at his house; or if the wife or family of such toll-gatherer or gate-keeper who shall die, shall refuse to deliver up the possession of such house, *&c.* within four days after such new appointment, any justice for the limit, by warrant under his hand and seal, may order the constable, *&c.* with such assistance as shall be necessary, to enter such premises in the day-time, and to remove the persons, together with their goods, out of such house, and to put the new-appointed officer into possession.

Gate-keeper and surveyor to render an account upon oath.

Sect. 56. The gate-keeper of every toll-gate, and every surveyor, shall, when required by notice in writing from the trustees, render upon oath a true account, in writing, to the trustees, or any person, to be named in such notice, appointed by them, of all monies received by him at such toll-gate, or otherwise, on account of such turnpike road, under the penalty of 5 *l.*

Sect. 57.

Sect. 57. No gate-keeper is to be removed as a *pauper*, unless chargeable to the parish, *&c.*; nor shall he gain a settlement by renting the tolls, nor be assessed for the toll-house or tolls, towards the payment of any poor's rate or parochial levy.

Gate-keeper not to be removed as a pauper.

Sect. 58. Gate-keepers permitting a greater number of horses, or carriages constructed otherwise than allowed by the act, or without proper inscriptions painted thereon, and not prosecuting for the same, forfeit 40*s.*

Gate-keeper to forfeit 40s. for neglect.

Sect. 59. The justices at any special sessions, upon application to them made by the surveyor, may summon the clerk and surveyor of such turnpike road to appear before them at some other special sessions, and there produce a state of the revenues and debts belonging to such turnpike road, and such justices may enquire into the condition of the repairs thereof, and also of such other highways: and if it shall appear to them, that the whole or any part of such statute-duty may be conveniently dispensed with, and that such statute-duty is wanted for the repairs of the other highways within such parish or place; then the justice may order the whole or part of such statute-duty to be performed upon the highways, not being turnpike, within such parish or place, under the direction of the surveyor thereof, as to them shall seem just and reasonable.

Justices may summon the clerk and surveyor to enquire into the state of the roads.

Sect. 60. The justices within the principality of *Wales*, at their respective general sessions to be held in the week after *Michaelmas*, may licence an increase of the number

Justices in Wales may licence an increase of horses, if necessary.

number of horses to be employed in drawing carriages over the number before limited, if they shall find it necessary, and at any *Michaelmas* quarter sessions, may revoke, alter or vary the same.

Sect. 61. No toll shall be collected at any toll-gate, in respect of carriages solely employed in carrying materials for the repair of any turnpike road or publick highway.

Sect. 62. No surveyor shall gather stones from the common fields or inclosed lands of any person, without his consent or a licence from a justice.

Sect. 63. As many persons are liable by tenure, inclosure, *&c.* to the repair of highways, which having become turnpike roads, are more used, and occasion an increase of the expence; it is enacted, That the trustees of such turnpike road may agree with the person liable to repair such highway, for the repair thereof, and contribute so much to the repair thereof, out of the tolls, or out of the statute-duty as they shall think reasonable.

Parishes or persons liable to repair an old highway shall continue to pay what would be equal to repairing such old highway.

Sect. 64. The inhabitants of every parish, *&c.* and the person who was or shall be liable to the repair of any old highway which hath been diverted, shall continue liable to the repair of any new highway, or so much thereof as shall be equal to the expence of repairing such old highway; and if the parties interested cannot agree therein, the same shall be viewed by two justices, and determined by them; and after such determination, the inhabitants of the parish, *&c.* or the person liable to repair such new highway, shall bear a charge

charges of indictment and prosecutions for not repairing the same: and if it shall be found more convenient to fix a gross sum, or an annual sum, instead of fixing the proportion of such new highway to be repaired by him, the said justices may, with the consent of such person, and the inhabitants interested therein, and also of the trustees at a publick meeting, if it be turnpike road, order the same accordingly; which order shall be binding to all persons whomsoever.

Sect. 65. The treasurers and surveyors shall give bond with surety to the trustees, for the duly paying the money in their hands.

Treasurers and surveyors to give security.

Sect. 66. The trustees, on *September* 30th next, are to put on every toll-gate a table of the tolls, and of the weights allowed to each carriage, and to examine the weighing engines, to see they are kept in good order.

Sect. 67. In all carriages, wherein oxen or neat cattle shall be used, two oxen or neat cattle shall be considered as one horse.

Sect. 68. For the better discovery of offenders, the owner of every waggon, wain or cart, and also of every coach, post chaise or carriage let to hire, shall paint upon some conspicuous part of his waggon, wain or cart, and upon the *pannels of the doors* of all coaches, post-chaises or carriages, before the same shall be used upon any turnpike road, his christian and surname, and the place of his abode, in large legible letters, and continue the same thereupon, so long as such waggon, cart, coach, post-chaise

The owner's name to be painted on every waggon, cart, coach, &c. let to hire.

chaise or carriage, shall be used upon any such turnpike road; and the owner of every common stage waggon or cart, employed in travelling stages from town to town, shall, besides his or her christian and surname, paint on the part and in the manner aforesaid, the following words, *COMMON STAGE WAGGON*, (or *CART*, as the case may be); and every person using such carriage as aforesaid, upon any turnpike road, without the names and descriptions painted thereon as aforesaid, or who shall paint any false or fictitious name or place of abode, on such waggon, wain, cart, coach, post-chaise or carriage, shall forfeit for every offence not exceeding 5 *l.* nor less than 20 *s.*

Tire to be flat.

Sect. 69. After *Michaelmas* 1776, the tire of all waggons, *&c.* shall be flat, and the nails sunk so as not to rise above the surface; and the offender shall forfeit 40 *s.* and the driver 20 *s.* for every offence.

Sect. 70. When the powers for providing materials, enlarging and turning turnpike roads, making drains, pruning hedges and trees, and calling forth the statute-duty, are ineffectual, and where more ample powers for these purposes are given by the highway act, the surveyor of turnpike roads, with the approbation of the trustees, may execute and enforce these powers upon and for the benefit of the turnpike roads, upon the terms and under the restrictions, in the highway act.

Satisfaction to be made for materials.

Sect. 71. When materials shall be dug or got by the surveyor of a turnpike road,

the ſeveral or incloſed lands of any perſon, for the uſe of any turnpike road, ſatisfaction ſhall be made by the truſtees to the owner or occupier of ſuch lands or grounds, for the materials ſo to be dug or got, and alſo for the damages in carrying away the ſame.

Sect. 72. No objection ſhall be made, or advantage taken, for want of form in proceedings, by virtue of this act, by any perſon whomſoever.

Sect. 73. Every conſtable, headborough, or tithingman, neglecting to put the act into execution, or to account for and deliver any forfeiture, and every ſurveyor, and every toll gatherer, and other perſon employed by truſtees appointed for the repairing roads, as ſhall receive ſalaries, who ſhall wilfully neglect for one week after the offence committed, to lay ſuch information upon oath before his majeſty's juſtices, as by the act is directed, ſhall forfeit, for every neglect, 10 *l.*

Conſtables, &c. neglecting to lay information, ſhall forfeit 10 l.

Sect. 74. No conviction ſhall be had by virtue of the act, unleſs, upon confeſſion of the party accuſed, or upon the oath of credible witneſſes; and any inhabitant where any offence ſhall be committed contrary to the act, ſhall be deemed a competent witneſs, notwithſtanding his being an inhabitant; and any juſtice may act in the execution of the act, notwithſtanding he may be a creditor, or a truſtee for repairing and amending the roads.

Inhabitant may be a witneſs.

Sect. 75. In caſe any perſon ſhall reſiſt, or make forcible oppoſition againſt any perſon

Any perſon oppoſing the execution of this act, or who ſhall make any reſcue, &c. ſhall forfeit not exceeding 10 l.

ſon employed in the due execution of the act, or ſhall aſſault any collector of the tolls in the execution of his office; or ſhall paſs through any turnpike-gate, rail, or chain, or other fence ſet up by authority of parliament, without paying the toll appointed to be paid at ſuch gate or fence; or ſhall hinder or obſtruct any perſon in the meaſuring or guaging the wheels of any carriage, or make any reſcue of cattle or goods, diſtrained by virtue of the act; or if any conſtable, headborough, or tithingman, ſhall refuſe to execute any warrant granted by any juſtice, purſuant to the directions of the act; every perſon offending therein, ſhall, for every offence, forfeit not exceeding 10*l.* nor leſs than 40*s.* to be paid to the ſurveyor where the offence was committed, and laid out in the repairs: and in caſe he do not forthwith pay the ſaid forfeiture, after ſuch conviction, ſuch juſtice may commit him to the common gaol, or houſe of correction, there to remain not exceeding three months, unleſs the forfeiture ſhall be ſooner paid.

Penalties impoſed by this act to be recovered by diſtreſs and ſale.

Sect. 76. All penalties impoſed for any offence againſt the ſame, and all coſts to be allowed and ordered by the authority of the act, (the manner of levying and recovering of which is not otherwiſe particularly directed), ſhall be levied by diſtreſs and ſale of the goods and chattels of the offender, by warrant under the hand and ſeal of ſome juſtice for the limit where ſuch offence ſhall happen, and ſuch order for payment of ſuch coſts ſhall be made, rendering the overplu-

of ſuch diſtreſs and ſale, if any, to the party, after deducting the charges of making the ſame, and the penalties and charges, when ſo levied, ſhall be paid, the one half to the informer, and the other to the ſurveyor of the turnpike road where ſuch offence ſhall happen, to be employed towards the repair thereof, unleſs otherwiſe directed by the act: and in caſe ſuch diſtreſs cannot be found, and ſuch penalties, or the ſaid coſts, ſhall not be forthwith paid, ſuch juſtice is required to commit ſuch offender or perſon liable to pay the ſame, to the common gaol, or houſe of correction, for not exceeding three months, unleſs the penalty or charges, ſhall be ſooner paid: and if ſuch offender ſhall live out of the juriſdiction of the juſtices, any juſtice of the peace of the limit wherein ſuch perſon ſhall inhabit, upon requeſt to him for that purpoſe made; and upon a true copy of the conviction whereby ſuch forfeiture was incurred, or of the order for the payment of ſuch charges, produced and proved by a credible witneſs upon oath, by warrant, under his hand and ſeal, may cauſe the penalty mentioned in ſuch conviction, or the coſts in ſuch order, to be levied by diſtreſs and ſale of the goods and chattels of ſuch offender; and if ſufficient diſtreſs cannot be found, may commit ſuch offender to the common gaol, or houſe of correction, for the time, and in manner aforeſaid.

Or the offender to be impriſoned not exceeding three months.

Sect. 77. No warrant of diſtreſs, unleſs directed by the act, ſhall be iſſued for levying the penalty or charges, until ſix days after the

the offender shall have been convicted, and an order served upon him for payment.

Penalties, not otherwise directed, shall be applied to amend the roads.

Sect. 78. Whatever penalty shall be levied on the information of the surveyor, or of any toll-gatherer or person employed by the trustees, and receiving salaries for their services, and not otherwise directed by the act, shall be applied to the amending of the turnpike roads, and to no other purpose.

How to sue for and recover any forfeiture.

Sect. 79. Every prosecutor may, at his election, sue for and recover any forfeiture imposed by acts made for erecting turnpikes or for repairing and amending turnpike roads in the manner afore-mentioned; *viz.* if the same shall not amount to 40 *s.* it shall be recoverable only by information before justice; and if the same shall amount to 40 *s.* or upwards, it may be recovered by information, or by action of debt in any court of record, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of————— being forfeited by an act, passed 13 *Geo.* 3. intituled, *An act to explain, amend, and reduce into one act of parliament, the general laws now being for regulating the turnpike roads in the part of* Great Britain *called* England, *and for other purposes*; and the plaintiff if he recover in such action, shall have full costs: provided there shall not be more than one recovery for the same offence, and ten days notice in writing be given to the party offending previous to the commencement of such action, and the same be commenced within one calendar month after the offence for which

such action is brought shall have been committed.

Sect. 80. Where distress shall be made for any sum to be levied by virtue of the act, the distress itself shall not be deemed unlawful, nor the party making it a trespasser, for want of form, or irregularity in the proceedings; but the party aggrieved may recover satisfaction for the special damages.

Distress not unlawful for irregularity.

Sect. 81. The plaintiff is not to recover for any irregularity in the proceedings, if tender of amends be made before the action is brought; and the defendant is to pay money into court.

Sect. 82. If any person shall think himself aggrieved by any thing done by a justice in pursuance of the act, except under the particular circumstances after-mentioned, and for which no particular method of relief hath been appointed, such person may appeal to the justices at any general quarter sessions; the appellant first giving to such justice, by whose act such person shall think himself aggrieved, notice in writing of his intention to bring such appeal, and of the matter thereof, within six days after the cause of complaint arose; and within four days after such notice, entering into recognizance before some justice, with one sufficient surety, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such sessions; and the justice, having received notice of such appeal, shall return all proceedings whatever before them, touching the matter of

Persons aggrieved may appeal to the general quarter sessions.

ſuch appeal, to the juſtices at their genera quarter ſeſſions, on pain of forfeiting 5*l.* fo every neglect; and the juſtices at ſuch ſeſſion upon due proof of ſuch notice being given and of the entering into ſuch recognizanc ſhall hear and determine the cauſes of ſuc appeal in a ſummary way, and award ſuc coſts as they ſhall think proper, to be levi as herein-before directed; and the determ nation of ſuch quarter ſeſſions ſhall be fina and no proceeding to be had in purſuance the act ſhall be quaſhed for want of form, removed by *certiorari*, or other writ, into a court of record at *Weſtminſter*.

Appellant muſt give ſix days notice.

Sect. 83. No appeal ſhall be made agai any conviction for a penalty incurred by v tue of the act, unleſs the perſon convic ſhall, at the time of conviction, if he ſh be then preſent, if not, within ſix days aft give notice of his intention to appeal, at the ſame time enter into recognizance, give ſecurity, with ſufficient ſureties, to ſuch forfeiture, in caſe ſuch conviction ſh be affirmed upon ſuch appeal; and upon giving ſuch ſecurity, the proceedings for ſ penalty ſhall be ſuſpended until ſuch ap ſhall be heard and determined.

Truſtees may adminiſter an oath.

Sect. 84. Where any oath is hereby quired and directed, the juſtices of the p of any limit, or the truſtees of any turn road, (as the caſe may be), and accordin the ſeveral juriſdictions herein given to t reſpectively, as aforeſaid, ſhall and the hereby reſpectively impowered to admi the ſame.

Sect. 85. If an action be commenced for y thing done under the act, it shall be ought within three months after the offence ommitted, and in the county where the de- ndant resides, or the fact was done; and e defendant may plead the general issue, d give the act, and special matter, in evi- nce: and if the plaintiff proceeds in any her manner, the jury are to find for the de- ndant, and he is to have treble costs.

Action to be brought in three months.

Sect. 86. After *September* 28, 1773, an , passed 7 *Geo.* 3. intituled, *An act to ex- in, amend, and reduce into one act of parlia- nt, the general laws now in being for regu- ng the turnpike roads of this kingdom, and ather purposes therein mentioned*, (except so ch as repeals the several acts therein men- ned) shall be repealed; and the act shall mence on *September* 29, 1773.

Watermen.

THE lord mayor and court of aldermen are yearly to elect eight of the best wa- en, to be overseers and rulers, and preserve order amongst the rest; and the water- shall choose assistants, who may make to be observed, under penalties; and ord mayor and aldermen, and justices of are to hear and determine offences, &c. rmen and lightermen on the *Thames*, be- n *Gravesend* and *Windsor*, are made a

Overseers and rulers, &c. and their power.

company by ſtatute 2 & 3 *P. & M.* c. 16 11 & 12 *W.* c. 3. 21.

Watermen's names registered, of boats, &c.

The names of watermen ſhall be regiſtere by the overſeers; their boats ſhall be 12 foo and a half long, and 4 feet and a half broa in the midſhip, or be liable to be forfeited and two watermen ſhall not ply, except on of them hath exerciſed the profeſſion 2 year and hath been allowed by the overſeers. An watermen taking more than the fares appoin ed, forfeit 40*s.* and ſuffer half a year's impriſon ment; and refuſing to carry perſons for the fare, ſhall be impriſoned 12 months. *Ibid.*

Taking more than their fares.

Who to carry paſſengers on a Sunday.

The rulers are to appoint 40 waterme who are to carry paſſengers croſs the river *Sundays*; and after being paid for their labou the overplus is to be paid to the poor decay watermen, &c.

Licence for boats.

When any perſons travel on a *Sunday* w boats, they are to be allowed by a juſtice peace, on pain of forfeiting 5*s.* 11 & *W.* 3.

On notice watermen to ſerve in the fleet.

By the 4 *Ann.* c. 13. On notice of commiſſioners of the admiralty, watermen to appear before the company, to be ſent board the fleet: and on their not appeari they ſhall be impriſoned one month, and diſabled for 2 years.

Apprentices are not to take upon them care of any boat till 16 years of age, &c. cept they have worked with ſome able wa man for 2 years at leaſt, under the penalt 10*s.* 2 *G.* 2. c. 26.

Perſons to ſerve ſeven years, &c. by 2 Geo. 2.

Any perſon not having ſerved 7 year a waterman, &c. who ſhall row any boa

the ſaid river for hire, ſhall forfeit 10*l.* to be levied by diſtreſs; and for want of ſufficient diſtreſs, the lord mayor of *London*, or any juſtice of the peace where the offence is committed, may commit the offender to the houſe of correction, not exceeding one month, nor leſs than 14 days. 2 *G.* 2.

But nevertheleſs gardeners boats, dung boats, fiſhermen, mill boats, wood lighters, weſtern barges, *&c.* are excepted, and may be rowed by perſons in ſuch manner as accuſtomed. Exception in the act.

Watermen uſing boats, *&c.* upon the *Thames*, ſhall not take any apprentice under 14 years old, who ſhall be bound for 7 years, and inrolled in the book of the watermen's company, under the penalty of 10*l.* and no more than two apprentices ſhall be taken at one time, when the firſt has ſerved 4 years, on the like forfeiture. 10 *G.* 2. *c.* 31. Watermen regulated by 10 Geo. 2.

No perſon or perſons working any tilt boat, row barge, *&c.* ſhall take in above 37 paſſengers, and 3 more by the way; nor in any other boat above 8 paſſengers, and 2 by the way, on pain of forfeiting 5*l.* for the firſt offence, and 10*l.* for the ſecond, *&c.* And if any perſon be drowned, where a greater number is taken in, the waterman ſhall be guilty of felony, and tranſported. Number of paſſengers to be taken in.

The tilt boats uſed between *London Bridge* and *Graveſend*, ſhall be 15 tons at the leaſt, and other boats 3 tons: Alſo the rulers of the company of watermen are to appoint two officers, one at *Billingſgate* at high water, and another at *Graveſend*, to ring a bell for the How tilt boats is to be governed.

tilt boats to put off; and if they do not immediately proceed on their voyage, with sufficient men, without putting on shore within 2 miles, they shall forfeit 5 *l.* leviable on their boats, tackles, *&c.*

Barges, &c. excepted.

Those who navigate flat bottomed boats or barges, not subject to the penalties of this statute.

Rates of Watermen in and about *London* and *Westminster*.

	Oars. s.	Skull d.
From *London-bridge* to *Lime-house*, *New Crane*, *Shadwell Dock*, *Bell-wharf*, *Ratcliff Cross*.	0	1
To *Wapping Dock*, *Wapping New* and *Old Stairs*, the *Hermitage*, *Rotherhith*.	6	
From St. *Olave's* to *Rotherhith Church Stairs*.	6	
From *Billingsgate* and St. *Olave's* to St. *Saviour's Mill*.	6	
All the stairs between *London* and *Westminster-bridge*.	6	
From either side from *London* to *Lambeth* and *Vauxhall*.	1	0
From *Temple*, *Dorset*, and *Black-Friars Stairs*, or *Paul's Wharf*, to *Lambeth*.	8	
From *Whitehall* to *Lambeth* and *Vauxhall*.	6	
Over the water directly between *Vauxhall* and *Lime-house*.	4	

These rates are set forth and appointed the lord mayor of *London*, and aldermen, virtue of the statute.

Watchme

Watchmen.

WATCHMEN are of three kinds, *viz.* Those which are appointed by the statute of *Winton*, 13 *Ed. stat.* 2. *c.* 4. which is, that from *Ascension-day* till *Michaelmas*, watches shall be kept in all towns from sun setting to sun rising; in every city 6 men at every gate, in every borough 12 men, in every town 6 or 4, according to the number of the inhabitants; this watch is to be set by the constable, and the neglect thereof punishable by the *stat.* 5 *H.* 4. *c.* 3. their power is to arrest such as pass by until morning, and if no suspicion, then to be delivered; and if they are suspected, they shall be delivered to the sheriff, *viz.* to the common gaol, there to remain until they be in due manner delivered; and if they will not obey the arrest, hue and cry shall be levied upon them; but this watch extends only between *Ascension-day* and *Michaelmas*.

Watch by the statute of Winton.

There is another watch which may be kept by the constable *ex officio*, which may extend to other times, because there are other things under his charge as a conservator of the peace, as for the purpose to raise and pursue hue and cry upon robberies committed, by the statute of *Winton*, 13 *Ed. st.* 2. *c.* 1. to search for lodgers that are suspicious persons; which is to be done every week, or at least once in 15 days, by the same *stat. c.* 4. for night walkers and persons suspicious either by night or day, by the *stat.* 5 *Ed. c.* 14. And

Watch kept by the constable, ex officio.

though the constable is not bound to any precise time for this kind of watch, or punishable, if he omit it, barely for the omission, if he be ready upon occasion to do his office when required in these cases; yet it is in his power to hold such watches as often as he pleases; and herein the watchmen are the ministers and assistants of the constable, and are under the same protection with him, and may act as he doth.

Watch by authority of the justices.

There is also a kind of watch by authority of the justices of peace, which may be held at other times than the statute of *Winton* appoints, and the watch thus appointed hath the same power as either of the former; and this seems to be within the power of one justice of the peace by the first *assignavimus* of his commission; *vide Lamb. Just. lib.* 1. *c.* 20. *fo.* 185. *Dalt. c.* 60. *fo.* 142, *&c.* 139. *fo.* 292. but the safer and more usual way is by order of the sessions of the peace, or of the court of King's Bench.

Watchmen have a double protection of the law.

A watchman is an assistant to the constable, when the constable is present or in the watch; for so every man assisting the constable in the execution of his office hath the same protection that the law gives the constable; secondly, purely as a watchman set by order of law; and the law takes notice of his authority *sub eo nomine*, and therefore killing of a watchman in the execution of his office is murder. 3 *Inst.* 3. 7. *fo.* 52. 4 *Co. Rep.* 41. *a.* 9 *Co. Rep.* 66. *a.* 68. *a. b. Mackally's case.*

By the 5 *An. c.* 31. A watchman or any other person being slain in endeavouring to take a burglar or house breaker, on a certificate thereof under the hands and seals of two justices, his executors or administrators will be intitled to 40 *l.*

Watchman being slain in duty, his executor intitled to 40l.

And the watching and warding ought to be by men able of body, and sufficiently weaponed. *Dalt. c.* 104.

If a watchman take any person for suspicion of felony, he may inquire of his good name and fame, and if he finds him to be of good name and fame, he may let him go, without being guilty of an escape. *Dalt. c.* 159.

Persons taken by watchmen.

And if any person will not obey the arrest of the watchmen, they may levy hue and cry upon him, that he may be taken, or they may be justified in beating him, for he resisteth the peace and the justice of the realm, and may also set him in the stocks for the same until morning. *Dalt. c.* 104.

Vagrants.

THIS title consists almost wholly of the the statute of 17 *G.* 2. *c.* 5. commonly called the vagrant act.

An infant under the age of 7 years, shall not be deemed a rogue and a vagabond; but shall be removed to its place of settlement, as other poor persons not vagrants. *Black.* 276.

Particular offences and their punishments.

By the 17 *G.* 2. *c.* 5. All persons who threaten to run away and leave their wives and children to the parish; and all persons who shall unlawfully return to such parish from whence they have been legally removed, without bringing a certificate from the parish whereunto they belong, and also all persons who, not having wherewith to maintain themselves, live idle, and refuse to work for the usual wages given to other labourers in like work, in the parishes where they are; and all persons going about from door to door, or placing themselves in streets, highways or passages, to beg or gather alms in the parishes where they dwell, shall be deemed idle and disorderly persons; and it shall be lawful for any justice to commit such offenders to the house of correction, there to be kept to hard labour not exceeding one month; and it shall be lawful for any person to carry before a justice, any such persons; and if they shall resist or escape from the person apprehending them, they shall be subject to the same punishment as rogues and vagabonds are made liable to by this act; and it shall be lawful for the said justice, by warrant under his hand and seal, to order any overseer of the parish where such offender shall be apprehended, to pay the sum of five shillings, to any person so apprehending them for every such offender; which sum shall be allowed to such overseer in his account; but if such overseer neglect or refuse to pay the said sum, such justice, on oath thereof made, may, by warrant, order the same to be levied by distre

Five shillings reward for apprehending offenders.

tress and sale of goods of such overseer; and the overplus (if any) after the charges of such distress satisfied, shall be returned to such overseer, who in such cases shall not be allowed the sum so levied in his account.

Other offences and their punishments

Also all persons going about as patent-gatherers or gatherers of alms under pretence of loss by fire or other casualty; or going about as collectors for prisons, gaols, or hospitals; all fences and bearwards; all common players of interludes; and all persons who shall for hire, gain or reward, act, represent, or perform, or cause to be acted, represented or performed, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any part or parts therein, not being authorized by law; all minstrels; juglers; all persons pretending to be gypsies, or pretending to have skill in physiognomy, palmesty, or the like crasty science, or pretending to tell fortunes, playing or betting at any unlawful games; and all persons who run away and leave their wives and children, whereby they become chargeable to any parish; and all petty chapmen and pedlars wandering abroad, not duly licensed or otherwise authorized by law; and all persons wandering abroad and lodging in alehouses, barns, or out-houses, or in the open air, not giving a good account of themselves; and all persons wandering abroad and begging, pretending to be soldiers, marines, searing men, or pretending to go to work in harvest; and all other persons wandering abroad and begging, shall be deemed rogues

and vagabonds within the true intent and meaning of this act.

This act not to extend to soldiers, &c.

Provided always that this act, shall not extend to soldiers wanting subsistence, having lawful certificates from their officers, or the secretary at war, or to mariners or sea-faring men, licensed by some testimonial or writing under the hand and seal of some justice, setting down the time and place of their landing, or discharge, and the place to which such soldiers and mariners are to pass, and the names of the chief towns or places through which they are to pass, and limiting the time of such their passage while they continue in the direct way to the place to which they are to pass, and during the time so limited; or to any person going abroad to work at any unlawful work in the time of harvest, so as he, she, or they carry with him, her, or them, a certificate in writing signed by the minister and one of the churchwardens, or one of the overseers of the poor of the parish where they shall respectively inhabit, declaring that he, she, or they hath or have a dwelling house or place therein, which he, she or they inhabit.

Incorrigible rogues.

And all end-gatherers offending against 1 G. 1. *cap.* 23. and all persons apprehended as rogues and vagabonds, and escaped from the persons apprehending them, or refusing to go before a justice of the peace, or to be examined upon oath before such justice, or refusing to be conveyed by any such pass as is herein after directed, or knowingly giving a false account of themselves on such examinatio

nation; after warning given to them of their punishment; and all rogues and vagabonds who break or escape out of any house of correction before the expiration of the term for which they were committed, and all persons who after being punished as rogues and vagabonds, and discharged, shall again commit any of the said offences, shall be deemed incorrigible rogues within the true intent and meaning of this act. *Sect.* 4.

Any person may apprehend any offender.

If any person shall be found offending against this act, it shall be lawful for any person to apprehend the person so offending, and to convey to some justice the persons so apprehended; and in case any such constable or other such officer shall neglect to do it, he shall be punished as herein after directed; and if any other person being charged by any justice of the peace so to do, shall refuse to use his best endeavours to apprehend such offender; such person so offending as aforesaid, shall forfeit the sum of 10 shillings, to the use of the poor, to be levied by distress and sale of the offender's goods, by warrant from any justice or justices, and the overplus (if any) after the charges of such distress satisfied, shall be returned to such offender; and if any person, not being a constable, or such other officer, shall apprehend any such rogue, and deliver him to a constable or other such officer, or shall convey him to some justice of the peace, according to the directions of this act; or if any constable or other such officer shall so apprehend and convey such rogue or vagabond, it shall be lawful for such justice

Reward for taking up vagabonds, &c.

to

to reward any ſuch conſtable or other perſon, by making an order under hand and ſeal upon the high or chief conſtable to pay the ſum of 10 ſhillings to the perſon ſo apprehending him, within one week after demand, and producing ſuch order; and the ſame ſhall be allowed by the treaſurer of the county, riding, diviſion or liberty, to ſuch high or chief conſtable; and the ſaid juſtices at the general or quarter ſeſſions ſhall allow the ſame to ſuch treaſurer in his accounts; and in cities, boroughs, towns corporate, and other places where there are no high or chief conſtables, ſuch petty conſtables or other officers ſhall pay or retain ſuch reward as aforeſaid, and be allowed what they ſhall ſo pay or retain by virtue of this act in their reſpective accounts, upon their producing vouchers; and if any high conſtable, or where there is no high conſtable, ſuch petty conſtable or other officer, ſhall refuſe to pay ſuch reward or demand, it ſhall be lawful for ſuch juſtice, to levy the ſum of 20 *s.* by diſtreſs and ſale of the goods of ſuch officer, and thereout to allow the perſon intitled thereto, the ſaid reward of 10 *s.* and ſuch other recompence as the ſaid juſtice ſhall think fit, and the overplus (if any) ſhall be returned to ſuch officer upon demand. *Sect.* 5.

Generl privy ſearches to be made.

The juſtices for every county, riding, *&c.* or any two of them, ſhall four times in the year, or oftener (if need be) meet in their reſpective diviſions, and by their warrant command their conſtables or other peace officers of every hundred, *&c.* to make a general privy ſearch in one night throughout their reſpective limits, for

for the apprehending of rogues and vagabonds; and every juſtice ſhall alſo, on receiving information that rogues and vagabonds are in any place within his juriſdiction, iſſue his warrant to the conſtable or other officer, to ſearch for ſuch rogues and vagabonds; and ſuch as they ſhall find upon ſuch ſearch, they ſhall cauſe to be brought before any juſtice or juſtices of the peace of the ſame county, riding, *&c.*

Where any rogues or vagabonds, apprehended as aforeſaid, ſhall be brought before any juſtice, it ſhall be lawful for ſuch juſtice, and he or they are hereby required to inform himſelf or themſelves, by examination upon oath of the perſon or perſons apprehended, or of any other perſon, of the condition and circumſtances of the perſon ſo apprehended, and of the pariſh where he or ſhe were laſt legally ſettled; the ſubſtance of which examination ſhall be put into writing, and be ſigned by the perſon or perſons ſo examined; and the ſaid juſtice ſhall likewiſe ſign the name, and tranſmit it to the general or quarter ſeſſions of the peace, there to be filed and kept on record; and ſuch juſtice ſhall and is hereby required to order all ſuch perſons ſo apprehended to be publickly whipt; or to order ſuch perſons to be ſent to the houſe of correction, until the next general or quarter ſeſſions, or for any leſs time, as ſuch juſtice ſhall think proper; and after ſuch whipping or confinement, ſuch juſtices may, if they think convenient, by a paſs under hand and ſeal in the manner and form hereafter directed, cauſe

Juſtices of the peace to puniſh vagabonds, &c. taken up at privy ſearch.

Different ſorts of vagabonds how to be paſſed.

cause any person to be conveyed to the place of their last legal settlement; but if it cannot be found, then to the place of their birth; or if such persons be under the age of 14 years, and have any father or mother living, then to the place of the abode of such father or mother, there to be delivered to some churchwarden, or overseer of the poor, which pass shall be in the form or to the effect following.

To the constable of ——— in the county of ——— [or to the tythingman or other officer, as the case shall be] or [if the offender is committed to the house of correction] to the governor or master thereof: And also to all constables and other officers whom it may concern, to receive and convey, and to the churchwardens, chapelwardens, or overseers of the poor of the parish, town or place [as the case shall be] of ——— in the county of ——— or either of them, to receive and obey.

Form of the pass.

Whereas ——— was (or were) apprehended in the parish of ——— (or in the town of ———, or in any other place describing it) as a rogue and a vagabond, or as rogues and vagabonds, *viz.* wandering and begging there (or as the case shall be) and upon examination of the said ——— taken before ——— upon oath (which examination is hereunto annexed) it doth appear, that his, her, or their last legal settlement is ——— in this county, (or, in the county of ———) or, that the said ——— was (or were) born in the parish of ——— in the county

county (or in the county of ———) and hath (or have) not since obtained any legal settlement; or that the said ——— is (or are) under the age of 14 years, and hath (or have) a father or mother living or abiding in the parish (or town of) ——— (or other place describing it). These are therefore to require you the said constable, or other officer, (or governor or master of the house of correction, as the case shall be) to convey the said ——— in the next direct way to the said parish (or town) of ——— (or other place) within the said county, and there to deliver him (her, or them) to some churchwarden, chapelwarden, or overseer of the poor of the same parish (town or place) to be there provided for according to law (or in case the said parish, town, or place, to which such person or persons is or are to be sent, lies in some other county, riding, division, corporation, or franchise, having separate, general or quarter sessions of the peace, then the form shall be as followeth, *viz.*) To convey the said ——— to the parish (or town) of ——— that being the first parish (or town) in the next precinct through which he (she or they) is (or are) to be sent, and to deliver him (her, or them) to the constable or other officer of such first town (or parish) in such next precinct, together with this pass, and the duplicate of the examination of the said ——— taking his receipt for the same: and the said ——— is (or are) to be thence conveyed on in like manner to the said parish (or town of) ———, there to be delivered to some

ſome churchwarden, chapelwarden, or overſeer of the poor of the ſame pariſh (town or place) to be there provided for according to law; and you the ſaid churchwardens, chapelwardens, and overſeers of the poor, are hereby required to receive the ſaid perſon (or perſons) and provide for him (her or them) as aforeſaid.—" And be it further enacted by the authority aforeſaid, That ſuch juſtice or juſtices ſhall make or cauſe to be made a duplicate of ſuch paſs and examination, and ſign the ſame; and ſhall afterwards tranſmit the duplicate of the ſaid paſs annexed to the examination, to the next general or quarter ſeſſions of the peace, there to be filed and kept on record; and ſhall annex the duplicate of the examination to the paſs and ſend it with the ſame: and the ſaid paſs, examination, and duplicates thereof, ſhall and may be read in any court of record in *England*, *Wales*, or the town of *Berwick* upon *Tweed*, as evidence. *Sect.* 8.

Power of juſtices, over vagabonds and incorrigible rogues.

" Be it further enacted, That where any offender againſt this act ſhall be committed to the houſe of correction, until the next general or quarter ſeſſions; and the juſtices at ſuch ſeſſions ſhall adjudge ſuch perſon a rogue, or vagabond, or an incorrigible rogue, they may order ſuch rogue or vagabond to be detained and kept in ſuch houſe of correction to hard labour, not exceeding 2 years, nor leſs than 6 months; and during the time to be corrected by whipping, in ſuch manner as they ſhall think fit; and ſuch perſons may (if the juſtices at the ſaid ſeſſions ſhall think convenien

venient) afterwards be ſent away by ſuch paſs, *mutatis mutandis*, as aforeſaid; and if ſuch perſon, being a male, is above the age of 12 years, the juſtices at their ſeſſions are hereby impowered, at any time before he is diſcharged, to ſend him to be employed in his Majeſty's ſervice, either by ſea or land, and if any ſuch incorrigible rogue, ſhall, before the expiration of the time for which he or ſhe ſhall be detained, break out or make his or her eſcape, or ſhall offend again in like manner; every ſuch perſon ſhall be deemed guilty of felony, and being convicted thereof, ſhall be tranſported for any time not exceeding 7 years. *Sect.* 9.

Juſtices to regulate the paſſes, by giving the officers certificates.

"The juſtice or juſtices who ſhall make the paſs, ſhall at the ſame time, with the ſaid paſs, cauſe alſo to be delivered to the conſtable, or other officer appointed to convey them, a note, or certificate, aſcertaining how they are to be conveyed, by horſe, cart, or on foot, and what allowance ſuch conſtable, *&c.* is to have for conveying them (according to the rates or allowance, appointed by the general quarter ſeſſions of the peace, as is herein after directed) in the form or to the effect following, *viz.* "Whereas by a paſs (reciting the ſubſtance or effect of the ſaid paſs) I (or we) do hereby order and direct the ſaid perſon (or perſons) to be conveyed on foot (or in a cart, or by horſe, *&c.*) to the ſaid town (or pariſh of) ——— in ——— or other place, (deſcribing it) in the way to ſuch pariſh (town or place, as the caſe ſhall be) in ——— days time; for which the ſaid conſtable, *&c.* is to be

be allowed the ſum of ——— and no more."

Given under my hand (or our hands) this day, &c.

The duty of conſtable and other officers with ſuch paſs and certificate.

"The conſtable, or other officer, who ſhall receive ſuch paſs and certificate, ſhall convey, or cauſe to be conveyed, the perſons named in ſuch paſs, in ſuch manner as by the ſame paſs ſhall be directed, the next direct way to the place where he, ſhe or they are ordered to be ſent; if ſuch place be in the ſame county, riding, &c. he ſhall deliver the ſaid perſon or perſons to the conſtable or ſuch other officer of the firſt town, or place, in the next county, riding, &c. in the direct way to the place to which ſuch perſons are to be conveyed, together with the ſaid paſs and duplicate of examination, taking his receipt for the ſame; and ſuch conſtable or other officer, ſhall, without delay, apply to ſome juſtice, who ſhall make the like certificate as before *(mutatis mutandis)* and deliver it to the ſaid conſtable or other officer, who ſhall, with all ſpeed, convey the perſon or perſons unto the firſt pariſh, &c. in the next county, &c. to another, till they come to the place to which they are to be conveyed; and ſo in like manner from one county, &c. to another, till they come to the place to which they are ſent; and the conſtable or other officer, who ſhall deliver them to the churchwarden, or other perſon ordered to receive them by ſuch paſs, ſhall at the ſame time deliver the ſaid paſs, with the duplicate of examination, taking their receipt for the ſame; and if the churchwarden or other per-

ſon

ſon, who ſhall receive any perſon ſo ſent, ſhall think the examination to be falſe, he is hereby impowered to carry the perſon ſo ſent, before ſome juſtice, who, if he ſee cauſe, may commit him to the houſe of correction, till the next quarter ſeſſions, and the juſtices there may deal with him as an incorrigible rogue; but the perſon ſo ſent ſhall not be removed to the place to which ſent, but by order of two juſtices, in the ſame manner as other poor perſons are removed to the place of their ſettlement. *Sect.* 11.

Perſons to pay for their own paſſage, if they are able.

"And whereas it often happens that perſons commit acts of vagrancy when they are able to pay for their journey home; be it therefore enacted, That it ſhall be lawful for any juſtice, before whom any vagrants ſhall be carried, to order ſuch vagrants to be ſearched, and their bundles to be inſpected by the conſtable, tythingman, churchwarden or overſeer, in the preſence of the ſaid juſtice; and if it ſhall appear, that he has wherewithal to pay for his paſſage, either in the whole or in part, to the pariſh to which they belong, then the ſaid juſtice ſhall order ſo much of the money to be paid, or other effects found upon ſuch vagrants, to be ſold and employed towards the expence of taking up and paſſing ſuch vagrants as aforeſaid. *Sect.* 12.

Regulations for paſſing v. grants into Scotland.

"The conſtable or other officer of any pariſh within the counties of *Cumberland*, *Northumberland*, *Durham*, or town of *Berwick* upon *Tweed*, are hereby authorized and required, upon any perſons being delivered to them by

paſs

paſs and examination, who ſhall have been apprehended within the ſaid counties or town, or brought to them according to the direction of this act, whoſe place of legal ſettlement is in *Scotland*, to deliver the ſaid examination to the clerk of the peace for ſuch reſpective county, and to convey ſuch perſons, with the ſaid paſs, into the next adjoining ſhire, ſtewarty or place in that part of the united kingdom; and to deliver them to ſome conſtable or other officer of the next pariſh, or place, within the ſaid ſhire, ſtewarty or place, taking his receipt for them; and ſuch officer is hereby required to receive ſuch perſons, and give ſuch receipt, and to diſpoſe of him, her or them according to law; and if any ſuch vagrant, after being ſo conveyed into that part of *Great Britain* called *England*, contrary to the true intent and meaning of this act; he ſhall be deemed an incorrigible rogue, and be puniſhed as incorrigible rogues are to be puniſhed by this act. *Sect.* 13.

Regulations for paſſing vagrants into Ireland, Jerſey, &c.

"Whereas divers vagrants have been conveyed from county to county, in order to be ſent to places in *Ireland*, the iſles of *Man*, *Jerſey*, *Guernſey*, or *Scilly*; (their laſt legal ſettlement) be it therefore enacted, That every maſter of any ſhip and veſſel or pacquet boat bound for *Ireland*, the iſles of *Man*, *Jerſey*, *Guernſey*, or *Scilly*, ſhall, upon warrant to him or them, directed under the hand and ſeal of a juſtice of the county, town or place where ſuch ſhip, *&c.* ſhall lie, to take on board the ſame ſuch vagrants as ſhall be named in the ſaid warrant, and convey them to ſuch place

place in *Ireland*, the isles of *Man*, *Jersey*, *Guernsey*, or *Scilly*, as such ship, *&c.* shall be bound to; and for the charges thereof such masters shall take, and the constable or person who serves him with the said warrant shall pay him at such rate *per* head, as the justices of the peace at their quarter sessions shall from time to time appoint for every such vagrant; and such master shall on the back of the said warrant, sign a receipt for the money so paid, and also for the vagrants so brought and delivered; which warrant shall then be produced to the justice who signed and sealed the same, and upon his allowance thereof, under his hand, the money so paid shall be repaid by the county; and every master of such ship, *&c.* refusing to receive on board, or to transport such vagrants, or to indorse and sign such receipt as aforesaid, shall forfeit five pounds for the use of the poor where the offence shall be committed. *Sect.* 14.

Masters not obliged to take on board more than one vagrant for 20 tons burden.

"Provided always, That no master of any such pacquet-boat, ship or vessel shall be compelled to take on board more than one vagrant for every 20 tons burthen of any such boat, ship or vessel. *Sect.* 15.

"The justices of any county, riding, *&c.* shall and may at the general or quarter sessions, appoint and direct what rates and allowances per mile, or otherwise, shall be made for the passing, conveying, and maintaining of rogues, vagabonds and incorrigible rogues, to be passed as aforesaid; and may likewise make such other orders, rules and directions, as they shall think proper; which rates, allowances,

lowances, orders, rules, and directions shall be observed and submitted to by all justices, constables, officers, or other persons within the same limits. *Sect.* 16.

"In case any petty constable, or other such officer of any parish, shall bring to any high constable any such certificate as aforesaid, as shall be given him by any justice, ascertaining how and for what rates, he shall be conveyed, to convey any rogues, vagabonds or incorrigible rogues as aforesaid, together with a receipt or note from any constable or other officer or person to whom the persons so to be conveyed were delivered, the said high constable shall pay in to such petty constable or other officer, the rates or allowances ascertained by such certificate, and no more, taking from such petty constable or other officer such certificate, and his receipt for the same; and the said high constable shall be allowed the same by the treasurer of the county, riding, *&c.* and the justices at the general or quarter sessions shall allow the same to such treasurer in his account, upon his producing and delivering up the vouchers: and in case any high constable shall refuse to pay the said petty constable or other officer or person, the rates and allowances ascertained in such certificate and receipt, on demand, it shall be lawful for any justice to levy double the sum ascertained by such certificate, by distress and sale of the goods of such high constable, and thereout to allow the said petty canstable, or other officer or person, the sum ascertained by such certificate and receipt, and

such

ſuch other recompence for his trouble, *&c.* as the ſaid juſtice ſhall think fit; and in cities, towns corporate and other places, where there is no high conſtable, ſuch petty conſtables or other officers, ſhall be allowed what they ſhall ſo pay, purſuant to the directions of ſuch certificate, in their reſpective accounts, upon their producing, ſuch vouchers; or in caſe any governor or maſter of a houſe of correction ſhall deliver ſuch certificate and receipt to any treaſurer as aforeſaid, ſuch treaſurer ſhall pay the rates therein aſcertained to ſuch governor or maſter of a houſe of correction, taking his receipt for the ſame, which ſhall be allowed to ſuch treaſurer in his accounts, on his producing ſuch vouchers. *Sect.* 17.

Penalty on counterfeiting or otherwiſe altering certificates, receipts, or notes.

"In caſe any ſuch petty conſtable, or other officer or governor, or maſter of any houſe of correction, ſhall counterfeit any ſuch certificate, receipt or note, or make, or knowingly permit to be made, any alteration in any ſuch certificate, receipt or note, he ſhall forfeit the ſum of 50 *l.* and if he ſhall not convey, or cauſe to be conveyed, the perſons to the place where they ought to be conveyed, or ſhall not deliver them to the proper perſon; or if any conſtable, or officer or perſon, ſhall refuſe to receive any ſuch perſons ſent to them, or to give a receipt or note as before directed; that in any of the ſaid caſes, the conſtable or other officer or perſon ſhall forfeit the ſum of 20 *l.* which ſaid reſpective forfeiture ſhall be leived by diſtreſs and ſale of the offender's goods, one

moiety to be paid to the person or persons who shall first make information against any such offender, and the other moiety to the treasurer of the county or place, to be applied by him as part of the public stock. *Sect.* 18.

Vagrants, &c. to be set to work.

"And be it enacted, That the parish or place to which any rogue, vagabond, or incorrigible rogue, shall be conveyed by pass as aforesaid, shall take care to employ in work, or place in some work-house or alms-house, the persons so conveyed to them, until they shall betake themselves to some service or other employment; and in case any such persons shall refuse to work, the overseers of the poor of the parish or place, or the major part of them, may cause such persons to be carried before some justice, in order to be sent to the house of correction there to be kept to hard labour. *Sect.* 19.

Penalty on constables or officers not doing their duty.

"And be it further enacted, That in case any constable or other officer, or governor or master of any house of correction, shall be defective, remiss, or negligent in his duty in the execution of this act, in any case for which no punishment is herein before particularly provided; or in case any person shall disturb or hinder the execution of this act, or shall rescue any person apprehended or passing from place to place by virtue thereof, or shall be advising, aiding or assisting to his or her escape, and shall be thereof convicted, the person or persons so offending, for every such offence shall forfeit any sum not exceeding 5*l.* nor less than 10*s.* to the use of the poor

of the parish, *&c.* where the offence shall be committed; to be levied by distress and sale of the offenders goods. And if sufficient distress cannot be found, it shall be lawful for one or more justice or justices to commit the persons so offending to the house of correction, there to be kept to hard labour not exceeding two months. *Sect.* 22.

"And whereas persons herein before described to be rogues, vagabonds, or incorrigible rogues, are much encouraged in wandering about, by the reception they too often meet with in villages and places where they are permitted to lodge in houses, barns, or other out-houses or buildings, by means whereof, and their falling sick there, great expences are sometimes brought upon parishes: for remedy thereof be it enacted, That if any person shall knowingly permit any such rogue, vagabond, or incorrigible rogue, to take shelter in his or her house, barn, or other out-house or building, and shall not apprehend and carry them before some justice of the peace, or give notice to some constable, or other such officer so to do, such person shall forfeit any sum not exceeding 40 *s.* nor less than 10 *s.* one moiety to the informer, and the other moiety to the use of the poor; to be levied by distress and sale of the goods and chattels of such offender, by warrant from such justice or justices; and if any charge shall be brought upon any parish, by means of any such offence, the same shall be answered to the said parish by such offender and be levied by distress and sale of his goods and

Penalty for sheltering vagabonds.

chattels as aforesaid; and if sufficient distress cannot be found, such offender shall be committed to the house of correction, for any time not exceeding one month. *Sect.* 23.

Beggars having children how to be ordered.

"And whereas persons are often found offending against this act, having children with them, whom they bring up in a dissolute course of life, in which a race of disorderly persons will increase, if such children are suffered to remain with such offenders; be it therefore enacted, That if any such child, above the age of 7 years, shall be committed to the house of correction as aforesaid, it shall be lawful for the justices at the quarter sessions, at any time before such child be discharged, to order such child to be placed out in such manner as they shall think fit, as a servant or apprentice to any person within their respective jurisdictions, who is willing to take such child, to serve such person till such child shall arrive at the age of 21 years, or for any less time, as to the said justices shall seem meet: and if any offender who was found with such child as aforesaid, shall be again found with the same child (which was so placed out as aforesaid) offending against this act, such an offender shall be deemed an incorrigible rogue. *Sect.* 24.

How to order with regard to women delivered of children in the street.

"And whereas women wandering and begging are often delivered of children in parishes to which they do not belong, whereby they become chargeable to the same; be it therefore enacted, That where any such woman shall be so delivered, and become chargeable, it shall be lawful for the church-warden

wardens or overſeers of the poor of ſuch pariſh to detain ſuch woman in their cuſtody, until they can ſafely convey her to ſome juſtice, who ſhall examine her, and commit her to the houſe of correction, until the next general or quarter ſeſſions, who may (if they ſee convenient) order her to be publickly whipt, and detained in the houſe of correction, for any further time, not exceeding 6 months; and upon application of the churchwardens or overſeers of the place, where ſhe was ſo delivered, the juſtices at ſuch ſeſſions ſhall order the treaſurer of the county or diſtrict to pay them ſuch ſum of money, as ſhall be adjudged a reaſonable ſatisfaction for the charges ſuch place has been put to on ſuch woman's account; and if ſuch woman ſhall be detained and conveyed to a juſtice as aforeſaid, the child of which ſhe is delivered, if a baſtard, ſhall not be ſettled in the place where ſo born, or be ſent thither for want of other ſettlement, by a paſs, by virtue of this act, but the ſettlement of ſuch woman ſhall be deemed the ſettlement of ſuch child; any law to the contrary notwithſtanding. *Sect.* 25.

" And be it further enacted, That any perſons aggrieved by any act of any juſtice or juſtices of the peace out of ſeſſions, concerning the execution of this act, may appeal to the next general or quarter ſeſſions of the county, riding, *&c.* giving reaſonable notice thereof, whoſe order thereupon ſhall be final. *Sect.* 26.

"Provided always, That in all cities and towns, where, by virtue of ſpecial acts of parliament, the charge of paſſing vagrants is to be defrayed in other manner than is by this act directed, or where ſuch vagrants by virtue of ſpecial ſtatutes, are to be apprehended and conveyed to the places whither they are to be ſent by any perſon or perſons, to officers, other than thoſe named for that purpoſe in this act; ſuch charge ſhall be borne and defrayed in ſuch cities and towns in like manner as before the making of this act; and the perſon or officer liable to ſuch ſervice in the ſaid cities and towns, by virtue of the ſaid ſpecial acts of parliament, ſhall continue liable, as if this act had never been made; and if any perſon ſhall be delivered to a beadle within the city or liberties of the city of *London*, to be conveyed on, as directed by this act, the ſaid beadle or conſtable ſhall not deliver ſuch perſon in an other precinct within the ſaid city or liberties, but in the next county, as directed by this act. *Sect.* 27.

"And be it further enacted, That where any perſons offending againſt this act have been committed to the houſe of correction, there to remain until the next general or quarter ſeſſions, if, upon the examination of the perſons ſo committed, no place can be found to which they may be ſent by a paſs as aforeſaid, the ſaid juſtices ſhall at the ſaid ſeſſions order ſuch perſons to be detained and employed in the houſe of correction, until they

they can provide for themselves, or until the justices, at their general or quarter sessions, can place them out in some lawful calling, as servants, apprentices, soldiers, mariners or otherwise, either within his realm, or his Majesty's colonies or plantations in *America*, which the said sessions are impowered to do in such manner as they shall think fit. *Sect.* 18.

"Provided always, That this act shall not in any wise extend to disinherit, prejudice or hinder the heirs or assigns of *John Dutton* of *Dutton*, late of the county of *Chester*, Esq; deceased, their heirs or assigns, for, touching or concerning the liberty, privilege, pre-eminence or authority, jurisdiction or inheritance, which they, their heirs or assigns, now lawfully may or ought to use, within the county palatine of *Chester*, and county of *Chester*, or either of them, by reason of any ancient charters of any Kings of this land, or by reason of any prescription, or lawful usage, or title whatsoever." *Sect.* 29.

The Form of the High Constable's Warrant.

Worcestershire. To the constable of ———

By virtue of a precept from his Majesty's justices of the peace for the said county, acting in and for the said division, at their special meeting for that purpose assembled, you are hereby required in his Majesty's name, commanding and taking to your assistance sufficient men within your constablewick (who are hereby required to assist accordingly) to make a general privy search, in the night of the ——— day of ——— throughout your said constablewick, for the finding

finding and apprehending of rogues and vagabonds: And such as you shall find upon such search, you are to carry forthwith before some of his Majesty's justices of the peace for the said county, to be dealt with according to law. Herein fail not. Given under my hand the —— day of —— in the year of our Lord

H. C.

APPENDIX.

An Act of the 14th of GEORGE the Third, to repeal a Clause in an Act made in the Thirteenth Year of His Reign, intituled, *An Act to explain, amend, and reduce into One Act of Parliament, the general Laws now in being for regulating the Turnpike Roads in the Part of* Great Britain *called* England *and for other Purposes*; which regulates the Width of the Wheels, and the Length of Carriages liable to be weighed; and for indemnifying Persons who have offended against the said Clause.

Preamble. Clause in Act 13 Geo. III. repealed;

WHEREAS by a clause in an act made in the thirteenth year of GEORGE III. intituled, "An act to explain, amend, "and reduce into one act of parliament, the "general laws now in being for regulating the "turnpi

"turnpike roads in that part of *Great Britain* "called *England*, and for other purposes;" it is enacted, That no carriage, liable to be weighed, shall pass along any turnpike road, being above twenty miles from the cities of *London* or *West-minster*, unless it shall be made in such manner that no pair of the wheels thereof shall be wider than four feet six inches from inside to inside, to be measured on the ground, (except wheels having the soles of the fellies of the breadth of nine inches, so constructed as to roll a surface of sixteen inches, and that the wider pair of such wheels shall not be more than five feet eight inches from inside to inside, to be measured on the ground); and that the distance from the centre of the fore wheel to the centre of the hind wheel of any waggon or four-wheeled carriage, not being used for the carriage of timber only, be not above nine feet, to be measured from the centre of the axle-trees at the ends thereof, on pain of the owner forfeiting the sum of five pounds; and that the surveyor or gate-keeper, of any turnpike road, is authorised and required to measure every such waggon, wain, or cart; and if any master, or driver of any waggon, wain, or cart, shall hinder such surveyor or gate-keeper from measuring such waggon, wain, or cart, as aforesaid, he shall forfeit five pounds; and that it shall not be lawful for any such waggon, &c. not permitted to be measured as aforesaid, to pass along any turnpike road: and whereas the provisions in the said clause contained have been found very inconvenient; be it therefore enacted, That the said clause shall be, and is hereby declared to be, repealed.

and hereby repealed.

And

Persons guilty of omissions touching the execution of the said clause, are indemnified;

and personal actions for such offence, made void.

And be it further enacted, That every person who hath been guilty of any omission, touching the execution of the said clause, shall be and is hereby indemnified against any penalty or forfeiture for the same; and that all personal actions and suits, indictments, informations, prosecutions, and proceedings whatsoever, which have been, or shall be, prosecuted or commenced against any person for any such offence or omission, shall be void, to all intents and purposes whatsoever.

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